# OVERSIGHT OF DEPARTMENT OF LABOR'S INVESTIGATION OF ORGANIZED CRIME INVOLVING UNION WORKERS

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## HEARINGS

BEFORE THE

## COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

EXAMINATION ON THE RESPONSIVENESS OR LACK OF RESPONSIVENESS ON THE PART OF THE DEPARTMENT OF JUSTICE TO THE CRIMINAL REFERRALS MADE TO THEM BY THE DEPARTMENT OF LABOR

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MAY 11, 13, AND 27, 1982

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# OVERSIGHT OF DEPARTMENT OF LABOR'S INVESTIGATION OF ORGANIZED CRIME INVOLVING UNION WORKERS

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TUESDAY, MAY 11, 1982

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
*Washington, D.C.*

The committee met, pursuant to notice, at 9:38 a.m., in room 4232, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Hatch and Nickles.

Staff present: Ray Mollenhoff, professional staff member.

## OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. The committee will come to order.

Today we continue a series of hearings that we began this past February into the Department of Labor's law enforcement activities. On February 23 and 24, 1982, the committee was told of significant abuses in the handling of a pension fund loan case by the office of the solicitor of labor. Today and Thursday, our focus will be on the organized crime and racketeering section of the Labor Department's Office of the Inspector General.

In this set of hearings, we will be looking not only at this unit's overall job performance, which we have not prejudged, but also at the question of whether the resources to do the job that the Congress has charged them with performing have been used to perform proper and comprehensive work, and whether the legal authority and resources have allowed them to get the job done.

We will also be considering another matter which seems to come up in every Labor Department criminal case that we look into in our oversight process. That issue is the responsiveness or lack of responsiveness on the part of the Department of Justice to the criminal referrals made to them by various law enforcement officers of the Department of Labor.

The specific case before us today involves very serious allegations that several local chapters of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers have been selling union cards—or "books" as they are often called—at extortionate prices. These documents allegedly have been sold to transient out-of-work welders and new members at prices considerably in excess of the standard initiation fee and other related charges a regular member of these locals would pay.

Such an act would be a violation of section 501(c) of the Taft-Hartley Act, dealing with embezzlement, and section 439 of the Landrum-Griffin Act, dealing with the falsification of union records.

A related and perhaps more disturbing allegation has been made that unqualified persons are being sold these union books, and that such persons have standins or "ringers" taking the welding test for them. This could be a violation of various Federal and local statutes dealing with fraud. Another allegation is that transient members working for boilermakers locals are being forced, on threat of firing, into buying so-called 50–50 raffle tickets. This monthly raffle is called 50–50 because proceeds from ticket sales are to be split between the member whose ticket is drawn at the monthly meeting and a "sick and disabled fund" for members injured on the job or facing financial emergency. The goals of this raffle could be described as admirable, but the allegation of forced participation clouds this practice. If forced, these practices would violate the section of the United States Code dealing with extortion, that is 18 U.S.C. 1951.

Another aspect of this practice begs for an answer. If these raffles are held, even unofficially, in trade locals, what accountability is available to the Department of Labor for monitoring purposes? Who protects members who do not wish to participate? Allegation about book sales at extortionate prices and forced 50–50 raffle ticket purchases were presented to representatives of the Labor Department's Organized Crime and Racketeering Section in 1979, and by Labor to the Federal Bureau of Investigation in 1980. These centered around the Pittsburgh, Pa., area. However, the Pittsburgh informants presented leads that pointed to a nationwide bookselling scheme. Three years later, little or nothing was done to investigate these allegations, except for a referral by Labor to the U.S. Postal Inspector's office regarding the issuance of union cards by a phony union.

I want to know why Labor and the FBI have done so little to prosecute a real union for these very same abuses.

In connection with the original Pittsburgh case which was opened in 1979, we have two witnesses with us today to detail their roles. Gary and Wayne Boring will talk about their difficulties in getting Federal agencies to investigate the many leads that they gave these agencies. I want to emphasize, however, that the committee's own investigation has determined that these abuses are not confined to Pittsburgh and are probably nationwide in scope.

Before we get into the details of this case and the unwillingness or inability of Federal law enforcement agencies to investigate it thoroughly, we will hear from two other welders and a welding supervisor about abuses they have witnessed during recent years. None of these witnesses is from the Pittsburgh area, so they add weight to our determination that this scheme is not localized in scope; it is broadened and nationwide in scope. These witnesses, who very much fear retaliation against themselves or their businesses, will not be identified and will testify behind the glass screen you see here in front of the dais. However, their testimony will be sworn and will be made available to law enforcement agencies, if those agencies should decide to revive these now-dormant investigations into these matters.

We will also be hearing from various officials of the Labor Department's Organized Crime and Racketeering Section, the Department of Justice, and the U.S. Postal Service. We have invited the international president of the Boilermakers Union to testify and have extended a similar invitation to the business agent of local 154 of the union in Pittsburgh. The president of the union, Mr. Harold J. Buoy, has declined our invitation. Officials of local 154 have told us they want to withhold a decision on testifying until they observe and analyze today's testimony. We will hold open our invitation to the local and permit them to testify at the outset of Thursday's hearings if they decide to do so.

Let me emphasize, before we go any further, that our decision to hold these hearings was not based strictly on allegations made to us by the witnesses who will be here this morning. Committee staff contacted numerous other welders who declined to testify but confirmed the existence of these practices in numerous confidential interviews. We understand they will do the same if contacted by Federal law enforcement officials. Let me give you a summary of interviews with three of these persons. To protect their identities, we will call them John Doe Witness No. 1, 2, and 3.

John Doe No. 1. This witness was contacted by committee staff as one who could confirm many of the alleged abuses already claimed by the Boring brothers. John Doe No. 1 confirmed that he not only was aware of several individuals buying their books at illegal prices, but that he himself purchased his journeyman book for well over $600 from Montreal Local 271. Following purchase of his book, he returned to the Pittsburgh area and immediately secured work out of local 254. He received his application for his Montreal book from an individual in the Pittsburgh 154 local, who had also secured a book from Montreal.

The staff determined that the legitimate cost for initiation fees into local 271 was no more than $200. When questioned about the 50-50 raffle scheme, John Doe No. 1 laughed, saying: "Sure I buy them, and if you want to keep work, you better." This witness says he will be glad to cooperate with the FBI if they call him, and the committee is ready to put them together at any time.

John Doe No. 2. This interviewee told the staff that the practice of qualified welders taking the welding test to certify unqualified welders was rife in the utility industry. He said it was done either with or without the qualified welder's concurrence. When asked how a faked test could be accomplished without the knowledge of the person taking the test, he said that the union foreman might ask a competent welder to run off five or six "coupons" or sample welds. Nothing specific would be said, but the welder running off these samples knew that they could have only one purpose: To be submitted for the botched work of an unqualified person who flunked the test.

John Doe No. 2 said that the welding foremen, who are union employees, were pushed by the union to get as many welders as possible certified for the job. Without this arrangement for faked tests, he said the wholesale purchase of union books at extortionate amounts could not flourish. John Doe No. 2 said that he himself had knowingly taken at least seven tests for unqualified welders at powerplants in the past several years. When asked if the individuals for whom he took the tests were allowed to perform work at that site, he said that qualified welders usually assisted them with their work, but that in most cases the unqualified persons were not assigned the most demanding tasks. This witness further explained that because of union featherbedding and the use of many of these unqualified welders as helpers, it was not in the contractor's interests to continue testing and rejecting welders. Each test, he said, cost upwards of $600. Although he had no knowledge of contractors pressing for compromise of the tests, he said that the cost of the tests created a subtle pressure for getting as many welders qualified as possible.

John Doe No. 3. After completing his apprenticeship in local 154, John Doe No. 3 has worked on several occasions with individuals who failed to serve an apprenticeship and, in his words.

> Did not know the first damn thing about welding. I mean this literally. There was one guy who freely admitted to men around the job site that his only experience up to that day had been as a truck driver. He did not even know how to put the liner in his hard hat.

When asked what percentage of new members in the local received their books through the standard apprenticeship program, John Doe No. 3 stated,

> At one time I thought that apprenticeship service was the rule of thumb. However, three or four years ago, there were about 700 members in the local, and I think that last apprenticeship class had under 40 men in it. By the time that class graduated to journeyman status, we had grown to about 1400 members.

When John Doe No. 3 was asked about the 50-50 raffle tickets, he said,

> Sure, I buy them, $5 a shot, just not to make any waves. Never won. Don't expect to. Only amounts to a few hundred bucks anyway. I'd like to know where the rest of the money goes.

Stating that although he has never taken the test at a job site for anyone personally, John Doe No. 3 says that it is done regularly. When asked how he knows, he stated,

> Well, like I told you before, some of these guys that I've worked alongside don't know the first thing about welding, but yet I will go to a job site, spend my time in the test booth, and the next day on the job, sure enough, one of these clowns is right there alongside of us. The only booth he could have tested out of is maybe a phone booth."

On the subject of these staff interviews, I must take note of the fact that several of these witnesses have stated to us that alleged welding test abuses took place at work sites on nuclear powerplants. Thus, the possibility exists that unqualified welders, gaining employment in this unethical and illegal manner, may have worked on one or more nuclear plants under construction, thus victimizing that industry and perhaps society as a whole.

It should be noted here that none of this testimony indicates in any manner that the utilities involved knew of what may have transpired. They were only innocent victims of the practice.

A final matter that we will be looking into in these hearings is the inability of the Labor Department's Organized Crime and Racketeering Section to deal with undercover informants. We will present documentation that a willing informant was introduced to the Labor Department's representatives on the U.S. Attorney's Organized Crime and Racketeering strike force in Philadelphia. He offered to infiltrate the Boilermaker's local in Pittsburgh and obtain information that he thought could lead to a prosecution regarding illegal union book selling. This informant was strongly endorsed by the former assistant U.S. attorney in Pittsburgh, Mr. Thomas Crawford. He also was endorsed by agents of the Bureau of Alcohol, Tobacco and Firearms in Pittsburgh. He wanted $15,000 plus expenses to do the job.

The Labor Department's representatives on the Strike Force were enthusiastic about using this informant, but their Washington superiors informed them accurately that Labor had no authority to pay for such undercover work. At this point, Labor closed its investigation and referred the case to the FBI. This particular informant refused to work with the FBI. So, because of this basic inflexibility in our law enforcement apparatus, an important opportunity to expose this book selling scandal may have been lost.

As I conclude my opening statement, let me emphasize the following points. We will listen to these allegations and question these witnesses, being ever mindful that without documented evidence there can be no final determination here and now on the merits of these allegations. We have invited one of the locals allegedly involved to respond to these charges. At all costs, we want to be fair. Our primary concern is, and should remain, to determine what, if any, efforts were made by appropriate law-enforcement agencies to investigate and confirm or refute these charges. They have certainly had ample opportunity to perform these investigations over the past 3 years.

Finally, it should be noted that we have interviewed a substantial number of knowledgeable individuals. The pattern of information they have offered us is clear. It seems that the practices delineated are common and well known throughout the welding community. Such complaints have been made on a number of occasions to the appropriate Federal agencies. The agencies involved, notably Labor and Justice, have added to an already dismal investigative track record by largely ignoring these charges. Whatever interest they have shown has been perfunctory at best. The Labor Department may have an excuse; the Justice Department does not. Even though a clear-cut case of the illegal selling of union welders' books was developed and successfully prosecuted through the postal inspection service, the other affected Federal agencies continued to ignore the situation. This is both inexcusable and repetitious of the same state of affairs we uncovered in our culinary workers hearing in February: open abuses, repeated again and again; complaints from a number of quarters, all of them specific; voluminous agency files; full knowledge of the Federal agencies involved, but nothing was done.

How often does this committee have to showcase such situations before Federal agencies begin to move in the investigative and enforcement area. In each case, whenever the committee follows the trail to the FBI and Justice Department, we are stonewalled by bureaucrats and political people who place prevention of embarrassment to the agency ahead of the public interest. Our requests for access to files are often delayed, as our request to the Justice Department was for almost 2 weeks in this case. Upon occasion, our requests for access have been denied, as they were in the culinary workers hearing. It is the same story leading me to reluctantly conclude that the Justice Department is often as much a part of the problem as the people perpetrating the actual abuses.

Our first witnesses this morning will be a panel of two welders and a welding supervisor, all of whom will be testifying behind the glass screen in order to protect their identities. We will refer to these witnesses simply as witness No. 1, 2, and 3. Witness No. 1, who is a welding supervisor, is already in place. So we will begin by swearing him in.

[The witness was sworn.]

The **Chairman**. Following the testimony of these witnesses, these witnesses will execute sworn affidavits linking their names to their testimony for placement in the chairman's sealed files.

Sir, would you provide us with a brief summary of your professional experience?

## STATEMENT OF WITNESS NO. 1, A WELDING SUPERVISOR

**Witness** No. 1. Senator, I have been a welder for the Boilermakers, I have been a welder for the Pipefitters, I am a senior welding engineer graduate, I have been a quality control manager, I have been a welding instructor, and I have been a welding inspector.

The **Chairman**. You have been a structural steel shop superintendent as well.

**Witness** No. 1. A structural steel shop superintendent.

The **Chairman**. What is your current position?

**Witness** No. 1. I am a senior welding engineer for a construction company, actually a welding superintendent.

The **Chairman**. Our staff does know the name of your employer, but I will not reveal that information publicly. I suppose you are concerned about the possibility of retaliation against yourself and perhaps your company?

**Witness** No. 1. Yes, I am.

The **Chairman**. The staff has checked you out thoroughly, as it has the other two witnesses who will testify behind the screen this morning. Generalities about locations and other matters that might pinpoint your identities will be fine as far as I am concerned.

Will you tell the committee, in general terms, what your current job entails?

**Witness** No. 1. My current job entails writing, qualifying, welding procedures and welders, all crafts. I am responsibile for any NDT, nondestructive testing, that goes on, on the job. I supervise the purchasing of materials for the job and just the overall welding performance that goes on.

The **Chairman**. How long have you held this position?

**Witness** No. 1. Two years.

The **Chairman**. Do you have any firsthand knowledge of welders paying amounts in excess of the standard fee for union memberships?

**Witness** No. 1. Yes, I do.

The **Chairman**. How many welders do you know who have bought cards at amounts greater than the normally required initiation fee or other charges for these union memberships?

**Witness** No. 1. I have handled thousands of welders in my career, and I would have to say the vast majority of them have bought books instead of going through the apprenticeship program.

The **Chairman**. Could you estimate the number?

**Witness** No. 1. Firsthand knowledge, I would have to say a couple of hundred.

The **Chairman**. Would it be at least 200?

**Witness** No. 1. At least, yes.

The **Chairman**. In what general area of the country have you worked?

**Witness** No. 1. Northeast.

The **Chairman**. You are saying east of the Mississippi?

**Witness** No. 1. East of the Mississippi, yes.

The **Chairman**. When you talk about 200 people or more who have bought cards at amounts greater than that which normally should be paid for these cards, how do you know this? Have you witnessed these transactions?

**Witness** No. 1. On several occasions I witnessed cash transactions. I was just in the right place at the right time.

The **Chairman**. But you actually saw cash moneys paid for these cards on several occasions?

**Witness** No. 1. Yes.

The **Chairman**. Are there any other ways that you know this?

**Witness** No. 1. It is common knowledge in the industry, Senator, once you get involved in being a welder or associated pressman.

The **Chairman**. As I understand it, a number of welders have told you they bought cards at exorbitant prices as well; is that right?

**Witness** No. 1. Yes. It is well known.

The **Chairman**. Where do these welders purchase their cards?

**Witness** No. 1. The individuals normally try to buy books from locals where they are living. More often than not, they have to go out of State or even through the international to buy book.

The **Chairman**. Do they purchase them all over the country?

**Witness** No. 1. Sure.

The **Chairman**. Do you think this practice is widespread?

**Witness** No. 1. Absolutely.

The **Chairman**. You told my investigators that in one western town, the union local has issued about 7,000 memberships, although only about 300 or so members work at the local? Is that correct?

**Witness** No. 1. That is because it is the cheapest.

The **Chairman**. That is the cheapest place to buy the books, but is this still at exhorbitant prices?

**Witness** No. 1. It is more than I wanted to pay.

You also indicated to my investigators that you can get these books in places like New Jersey, Oklahoma, Louisiana, just about anywhere, all over the country.

**Witness** No. 1. That is true.

The CHAIRMAN. Could you explain how this system works? For instance, if I wanted to go to work as a boilermaker in Baltimore, do I buy my membership from the Baltimore local?

WITNESS No. 1. To be very honest, it is not very clear on how the system works. It depends upon the individual and how badly he wants to become a book-carrying welder. There are many avenues open to him to obtain a book. The easiest route is to go through an out-of-town local that is known for selling books or go through the international and then bump into the particular local where he happens to be living.

The CHAIRMAN. I take it that the typical local wants to keep its membership static for control purposes?

WITNESS No. 1. That is true.

The CHAIRMAN. So they do not want to bring in unknown quantities who might vote them out of office or saturate their own labor force.

WITNESS No. 1. That has always been a problem with the locals, in that they want to keep their membership working. Most of your construction trades are considered seasonal, even though I would have to debate that. Most of the fellows in the better locals—and we really have to go back and talk about a local's reputation for craftsmanship, and that varies considerably between locals and crafts.

The CHAIRMAN. So the normal way to get a card is to go through an apprenticeship program, be trained by journeymen welders, and gradually learn the trade. Is that correct?

WITNESS No. 1. That is supposed to be the system, but because of the expense involved, training expense, most of your locals cannot absorb that type of expense when it comes to a welding program. So they normally try to get welders or people who can demonstrate an acceptable ability from a performance standpoint. They are usually brought right in, because welding is theoretically the cream of the crop; it is always in demand. There are not that many people today, especially young people, who are willing or want to be welders.

The CHAIRMAN. At least at apprentices' wages, I guess, if they can get journeyman's wages by merely buying a card.

WITNESS No. 1. It is a little bit more complicated than that. The locals are charged with the job of supplying good craft, good mechanics, people who can do the job that is needed and required. By sheer numbers, they cannot, not all the time. That is where the problem comes in. You get into the slow months and they have people sitting in the hall. You get into the summer months, and they are scrounging all over the country for people who can do the work. It has always been that way, and it will probably stay that way. It is a supply and demand problem.

With the welding end of it, just because of the nature of the craft itself, it is very unpopular. The money is good. But when it comes down to the performance of the welder, how many people really want to get hot slag and sparks. You know, I am a little shy up here [indicating]; my hair is burned away. It is not a popular skill. The Government looks upon welding as a skill and not a trade, and that is a problem. The various trade locals and unions themselves have always maintained that welding and burning is a tool of the trade. That phrase is used over and over again: a tool of the trade. That is the primary reason, as far as I am concerned, that the quality of the welders that we see in the field is so bad.

I have been both. I have been a pipefitter welder, and I have been a boilermaker welder. There is a vast difference in the job description or the concept of what a welder is, even between those two different crafts. That concept varies tremendously from local to local. It depends upon how that local's individuals have been able to supply quality people over the years, and it is a father, son or son-in-law kind of a chain. Their metallurgic concepts and their process concepts, for the most part, are way out. When you get involved in the supervision of these kinds of philosophies, it gets to be a problem. So, in order to get the job done that you have to do, you almost have to retrain some of these fellows, and that becomes a numbers problem, especially in the nuclear industry.

The CHAIRMAN. Let us go back to these union cards. You indicated that the purchase of these cards typically costs for out-of-town welders varies somewhere from $800 to $1,300; is that correct?

WITNESS No. 1. That is true.

The CHAIRMAN. Have you heard of people paying more than $1,300 for these cards?

WITNESS No. 1. Yes.

The CHAIRMAN. I have heard of people paying as high as $2,300 for a union card.

WITNESS No. 1. And more.

The CHAIRMAN. What is the standard fee charged for these cards?

WITNESS No. 1. For a welder who does not go through the apprenticeship program—and again I would like to emphasize that is the majority, as far as I am concerned, as my experience dictates—usually ranges from $1,200 to $1,600. I have been offered books at $1,200.

The CHAIRMAN. I am talking about what would be the standard fee if you were getting your cards in a legitimate way?

WITNESS No. 1. Again, Senator, that is a question that is extremely difficult to answer. There is no set norm. It is established, not only from the international bylaws but also from the local bylaws, and it changes from local to local.

The CHAIRMAN. Is it fair to say that usually you would pay from $50 and maybe as high as $400?

WITNESS No. 1. The international fee is approximately $35 to $50.

The CHAIRMAN. I see. But it might be as much as $400 if it included the international union's initiation fee, along with the local's fee?

WITNESS No. 1. Yes.

The CHAIRMAN. But would you pay much more than that, $50 to $400?

WITNESS No. 1. People who go through the apprenticeship program normally pay around $500.

The CHAIRMAN. What happens to the difference between the $50 or even the $400 and the $1,300 on up, the $800 to as high as $2,300, does that go into union funds?

WITNESS No. 1. It is supposed to.

The CHAIRMAN. Where do you think it goes?

WITNESS No. 1. I do not know. Whoever I met always drove a Lincoln.

The CHAIRMAN. You are quite sure it does not go into union funds; is that correct?

WITNESS No. 1. It is supposed to.

The CHAIRMAN. But does it?

WITNESS No. 1. I do not know.

The CHAIRMAN. You stated that on two occasions you saw welders pay cash for union memberships. How much did they pay on those two occasions.

WITNESS No. 1. One welder, who I happen to be related to, paid $1,200 cash, and the other one was over $1,000.

The CHAIRMAN. When did these transactions take place?

WITNESS No. 1. In 1979 or 1980.

The CHAIRMAN. That's pretty close. Somewhere in that area: between 1979 and 1981?

WITNESS No. 1. Right.

The CHAIRMAN. It is my understanding that you feel that these payments were greatly in excess of what it should have cost for a card for a legitimate welder.

WITNESS No. 1. Yes, if they went through the apprenticeship program.

The CHAIRMAN. How did you know that these amounts were in excess of the norm paid for cards? Did these welders complain to you?

WITNESS No. 1. Yes.

The CHAIRMAN. What did they say?

WITNESS No. 1. Well, anyone having to put out $1,200 cash, that's the primary reason I never bought a book. I never had that much cash. I would like to charge it, but they would never pay.

The CHAIRMAN. Did you ask them why they did not write out a check for it?

WITNESS No. 1. They will not take checks.

The CHAIRMAN. Who will not take checks?

WITNESS No. 1. The business agents.

The CHAIRMAN. The union leaders?

WITNESS No. 1. Cash only.

The CHAIRMAN. Are the welders who bought the cards in this manner that you know about, are they usually qualified to do the work they are hired to do?

WITNESS No. 1. I would say that the majority of the welders who obtain books have already demonstrated to the union personnel that they are able to meet an acceptable quality.

The CHAIRMAN. Minimum standards?

WITNESS No. 1. Minimum standards, right.

The CHAIRMAN. What about the rest of them?

WITNESS No. 1. You will find that people who come in as welders, who are sent to us as welders, have absolutely no ability at all. In your opening statement, they were truck drivers.

The CHAIRMAN. Do they even know what the tools are? Some of them?

WITNESS No. 1. No, but you have to say that, in all fairness about some of the welders; they do not even know how to set up the equipment.

The **Chairman**. So you are saying that some of them are and some of them are not qualified to do the job they are hired to do?

**Witness** No. 1. Right.

The **Chairman**. But even those who are, they are charged exhorbitant rates for their union cards?

**Witness** No. 1. Right. When you are making $17 or $19 an hour, that is a pretty small investment if they can get enough work over the year to make that.

The **Chairman**. My understanding is that the local selling the union membership generally requires some proof of some level of proficiency on the part of a purchaser of the card's part; is that not correct?

**Witness** No. 1. That is true, but we have to talk about what are the testing criteria, who is establishing the criteria.

The **Chairman**. Do they not require a visual test?

**Witness** No. 1. Well, a visual test to you might be acceptable, but to me, with my background, would be completely unacceptable.

The **Chairman**. So I take it, the visual test would not be very tough to begin with.

**Witness** No. 1. It depends on who is administering the test.

The **Chairman**. As I understand it, before a welder actually begins work on a particular job, he will have to take a performance test related to that job, but he may be able to get help with that if he needs it. Is that the way that has been operating with that test?

**Witness** No. 1. If the welding supervisor or the welding foreman is the type of fellow that likes to train as he goes along, and he can feel that he can adequately supervise the performance on the job of that individual, and he has a feel for what the actual job requirements are. You know, we are charged with getting the job done. If I have anchorbolts to weld, or if I have a main steam line to weld, there is a vast difference between the quality criteria that we should enforce.

The **Chairman**. You told our investigators that sometimes when a man cannot perform the job, but he has his card, he will get a ringer for him—in other words, someone to take the test for him?

**Witness** No. 1. When the crafts themselves administer the testing—again, that goes from craft to craft. The boilermakers normally will insist that they supervise the actual testing of the welders from a performance standpoint. They control the pipes, they control the plates, they control the men in the booth, and then when the samples are all neatly bent and tied up, they will give them to the contractor for supervision. That is where the problem lies.

The **Chairman**. So they control the ringers too, or those who substitute and actually do the job and take the test for those who are incompetent to do it; is that right?

**Witness** No. 1. Yes.

The **Chairman**. Do the union card purchasers and the arrangements for a ringer to take the welding test for the purchaser, do they come in one package deal?

**Witness** No. 1. No it is normally done on an individual basis, by job, and by local.

The **Chairman**. As I understand it, they are two separate deals. They are usually cut at two separate places. Not every person who has to pay an exorbitate amount for a card from an out-of-town local needs a ringer to take a test. Some of these card purchasers are very skilled welders. For the guys who get the ringers to take the test, this is usually arranged at the test site and has nothing to do with the local which issues the card; is that right?

WITNESS No. 1. The testing site is within a local jurisdiction. The local jurisdiction can send "el son-in-law" or "el cousino" or son or daughter, as on one occasion, and that is how it gets done.

The CHAIRMAN. Generally, when these people get ringers to take the test for them, that can be arranged and usually is arranged at the testing site. It generally has nothing to do with the local that actually issues the card; is that right?

WITNESS No. 1. No the local sends the individual to the site; the local has that control. When we get them on the site, they have no control over the test.

The CHAIRMAN. As welding supervisor, do you supervise the qualification testing of welders?

WITNESS No. 1. Yes.

The CHAIRMAN. How often?

WITNESS No. 1. Every day.

The CHAIRMAN. Have you ever observed ringers taking the test for fellow workers, as a welding supervisor?

WITNESS No. 1. I have observed other contractors.

The CHAIRMAN. On various sites by other contractors?

WITNESS No. 1. Yes.

The CHAIRMAN. On how many different jobs? Could you give us an estimate?

WITNESS No. 1. Oh, God, about 75 to 100.

The CHAIRMAN. So you are saying that on 75 to 100 different jobs, you have seen ringers taking tests for fellow workers?

WITNESS No. 1. Yes.

The CHAIRMAN. What kinds of projects were these when you observed the ringers taking the test for fellow workers?

WITNESS No. 1. They ranged from chemical plants, nuclear powerplants, fossil powerplants, bridges.

The CHAIRMAN. Approximately how many specific instances have you observed of ringers taking the tests?

WITNESS No. 1. I would say every single job, at one point or other, since most of the jobs I have ever been on involved more than one contractor.

The CHAIRMAN. Would it be as many as 200 or more?

WITNESS No. 1. I would say that would be correct.

The CHAIRMAN. You would say it would be 200 or more?

WITNESS No. 1. It is a standard practice throughout the industry.

The CHAIRMAN. Do the ringers take the test out of friendship, out of comraderie, for money or for some other consideration?

WITNESS No. 1. The better welders usually take the test for a fee.

The CHAIRMAN. In other words, they get paid for taking this test?

WITNESS No. 1. Sure.

The CHAIRMAN. How much does a ringer get for his service, usually?

WITNESS No. 1. Mostly, I would say it is usually like $20 or $25. I have seen it as high as $50 or $75.

The CHAIRMAN. So, between $20 and as high as $75 for taking a test?

**Witness** No. 1. It depends on how critically the weldment is needed, what type of weldment it is.

The **Chairman**. What happens when the worker who employs the ringer goes out on the job? Does the ringer do their work for them?

**Witness** No. 1. On occasion, if the fellow cannot really cut the mustard, and we do not want to lay him off.

The **Chairman**. How can they afford to do that? On these jobs, how can they afford a man who cannot do his welding work?

**Witness** No. 1. You have to consider the different levels of quality in each and every job. It goes back to the anchorbolt analogy versus the main steam line analogy. I might have fellows welding base plates on columns, where there is no structural requirement there at all for strength.

The **Chairman**. So whether he does right or wrong, you can put him to work?

**Witness** No. 1. Right; I need the manpower.

The **Chairman**. What you seem to be saying is, there is some featherbedding on these projects, where workers who welding may not be up to par are given easier jobs to do that they may or may not be able to do; is that right?

**Witness** No. 1. That is true.

The **Chairman**. Some welders who are not up to the task at hand pay the more competent welders to do the more difficult welds for them or to complete the welds themselves?

**Witness** No. 1. That is done on occasion, yes.

The **Chairman**. How much do they pay to get this help?

**Witness** No. 1. It depends on how long that particular welder wants to stay on the job, how long his contract will be.

The **Chairman**. Can you give us a couple of illustrations, where you observed welders who were incompetent or at least did not have the ability paid other welders to do the job for them?

**Witness** No. 1. I know of one instance where a welder was assigned to do a drain line on a reactor. He became very disgusted or upset, and he called one of his friends in and paid him $200 to finish the job.

The **Chairman**. Was this one of the reactor welds that was going to be X-rayed, controlled by X-ray control?

**Witness** No. 1. Yes.

The **Chairman**. What would you say the going rate is. Give us a range. Would you say $25 to $200?

**Witness** No. 1. I would say that $25 to $200 would be the range.

The **Chairman**. Depending upon the difficulty of the weld that had to be done?

**Witness** No. 1. That is correct.

The **Chairman**. How often have you observed such payments being made over the last couple of years?

**Witness** No. 1. I would say practically every job something like that goes on.

The **Chairman**. Does it go on all the time?

**Witness** No. 1. Yes.

The **Chairman**. What are the ramifications for safety at the plants where unqualified welders may be working? It bothers me that you could have unqualified welders working at nuclear powerplants, where the contractor and the purchaser of the powerplants are counting on having those welds all done right.

WITNESS No. 1. That problem is lifelong. The quality standards for the most part are really unrealistic from a performance standpoint. That is why we have 2 out of 200 welders, or people who call themselves welders, working continually because they have achieved that level of sophistication in the trade where they can consistently give us the quality that the present welding codes require. Those codes really are unrealistic. It is an attempt to upgrade the welding as a whole but at the very same time it defeats the overall purpose of quality. The requirements are so stringent that it just cuts down the number of people that are able to perform that way because of inadequacy in the training and equipment and contractor understanding of what welding is all about. Even from the craft standpoint, the vast majority of the people just do not know, and that has to be through training. That is the only way they are going to learn.

The CHAIRMAN. The Nuclear Regulatory Commission has stated that it would be difficult for a stand-in to take the test for another worker because the welding supervisor supervises the test. Their argument is that the welding supervisor cannot be compromised because he works for the company and not the union. Do you, as a welding supervisor, agree with the Nuclear Regulatory Commission's conclusion?

WITNESS No. 1. The fact is no, because my experience with the people on the Nuclear Regulatory Commission are extremely bad. They do not have qualified people, and I keep emphasizing that. It is not just because I am a graduate welding engineer, but anybody in management you will talk to, when it comes to the Nuclear Regulatory Commission, the experiences are always bad.

The CHAIRMAN. Do you feel that the welding supervisor is pressured by the union?

WITNESS No. 1. Absolutely. He is not only pressured by the union; he is pressured by his employer. He has to have the work done, and he has to have the people to do the work.

The CHAIRMAN. The employers do not give a darn themselves, it seems like.

WITNESS No. 1. They give a darn. They have to make a profit, so they have to have the people doing the work.

The CHAIRMAN. Even if the supervisor is not pressured by the employer and/or the union——

WITNESS No. 1. He is pressured, Senator.

The CHAIRMAN. By both?

WITNESS No. 1. Absolutely. He has to be.

The CHAIRMAN. But even if he is not, he may not even know who is really in the test booth; is that not correct?

WITNESS No. 1. That is true.

The CHAIRMAN. You do not have time to personally supervise every test.

WITNESS No. 1. I had 1 project where I had 250 welders. I am lucky if I can remember 20. I only know your name because I see it.

The CHAIRMAN. Unless you know the man personally, which you probably will not, if it is a new hire you will not know whether the guy is a wringer or not, will you?

WITNESS No. 1. That is true.

The CHAIRMAN. So all you know is whether the person taking the test passes it or fails it; is that right?

WITNESS No. 1. That is true.

The CHAIRMAN. The Nuclear Regulatory Commission says that a number is given the person taking the test, and that he retains his number throughout his tenure on that particular job. Would this not be a good safeguard against the compromise of the test?

WITNESS No. 1. We call that either stamps or brass in the industry. Again, it is a matter of followup or control. The majority of the people controlling the brass or the stamps are the union people, the shop stewards, the general foremen.

The CHAIRMAN. So you are saying, there may be some manipulation of those?

WITNESS No. 1. Absolutely.

The CHAIRMAN. So this is not enforced, even though the NRC thinks it is?

WITNESS No. 1. The NRC, you know, they are understaffed and underqualified. It is as simple as that.

The CHAIRMAN. Has anyone ever offered you a bribe to allow him to pass the test or allow a ringer to take the test for him?

WITNESS No. 1. Every job.

The CHAIRMAN. Every job?

WITNESS No. 1. Every job.

The CHAIRMAN. What do you do when that happens?

WITNESS No. 1. Well, I am kind of ornery, and I do not permit that kind of thing.

The CHAIRMAN. You turn them down?

WITNESS No. 1. Right.

The CHAIRMAN. Have you ever observed the sale of so-called 50-50 raffle tickets by union officials at construction sites.

WITNESS No. 1. Do you want to see four or five of them? I have them in my pocket.

The CHAIRMAN. Maybe we ought tc put some of them in evidence here.

So you have?

WITNESS No. 1. I do not mind, so long as I win.

The CHAIRMAN. Have you ever won?

WITNESS No. 1. Once.

The CHAIRMAN. Are workers forced to buy them?

WITNESS No. 1. It is well known, if you do not buy them you are not going to be on that job very long.

The CHAIRMAN. So you will be laid off if you do not buy the raffle ticket?

WITNESS No. 1. Right.

The CHAIRMAN. As I understand it, union members and management types or typically expected to buy one $1 ticket each payday; is that correct?

WITNESS No. 1. And more.

The CHAIRMAN. And transient members are asked to buy $5 tickets.

**Witness No. 1.** That is the norm.

The **Chairman.** Why do management personnel buy them?

**Witness No. 1.** Let's see. My tires cost me about $85 apiece, my windshields run about $175, my engines run $1,000.

The **Chairman.** You are saying, you fear things can happen if you do not buy these raffle tickets?

**Witness No. 1.** Sure.

The **Chairman.** Have you seen things happen if people have refused?

**Witness No. 1.** Eighteen years ago, I lost a set of tires.

The **Chairman.** Because you refused to buy raffle tickets?

**Witness No. 1.** I was young and brash. I guess I still am—brash anyway.

The **Chairman.** Has that been going on all these years?

**Witness No. 1.** Sure. In some way—Again, in all fairness, those raffle tickets are supposed to help the members of the particular local. I am sure some of the money gets there. I would really have to say that.

The **Chairman.** Do you know of anybody who has been helped by that money?

**Witness No. 1.** Yes, I do.

The **Chairman.** So 50 percent of that money is supposed to help some of the members in the local. What happens to the other 50 percent?

**Witness No. 1.** The other 50 percent goes to the individual who won the 50–50.

The **Chairman.** Is that usually the case?

**Witness No. 1.** Normally somebody on the site gets the money, whether he be an electrician, a boilermaker, or whatever.

The **Chairman.** When you won, how much did you win?

**Witness No. 1.** $200.

The **Chairman.** How many men were working in that area at that time?

**Witness No. 1.** We had around 60 men at that particular time.

The **Chairman.** When you talk about these strange things that happen if you do not buy the raffle tickets, are you talking about accidents? You indicated your windshield, your tires, your motor. Are you talking also about work slowdowns and even less competent welders being sent in from the local?

**Witness No. 1.** Work slowdown is the norm.

The **Chairman.** Is it a fair characterization to ask you if you are afraid not to buy these tickets?

**Witness No. 1.** I would not say I am afraid. I just accept it over the years. It is part of the construction life.

The **Chairman.** A little bit like paying taxes?

**Witness No. 1.** Right.

The **Chairman.** Are the payouts from the raffles typically 50 percent of the proceeds taken in, as they are supposed to be?

**Witness No. 1.** I would say yes.

The **Chairman.** One final question. We will be discussing at some length with our other witnesses today these practices as they relate to one local in particular, in Pittsburgh. I want to emphasize that your testimony regarding some of these practices is not limited to welders in that local only; is that right?

WITNESS No. 1. Yes.

The CHAIRMAN. You are talking about a much broader general area?

WITNESS No. 1. Yes.

The CHAIRMAN. As I understand it, you have dealt with a lot of job sites and different locals?

WITNESS No. 1. Yes, I have.

The CHAIRMAN. And wherever you have dealt with different job sites and different locals, have these same practices continued?

WITNESS No. 1. Yes.

The CHAIRMAN. Have you worked with transient local 154 members away from Pittsburgh that never actually worked at a Pittsburgh site?

WITNESS No. 1. That's correct.

The CHAIRMAN. So that would be a fair way of at least generally talking about your experience?

WITNESS No. 1. Yes.

The CHAIRMAN. I would like to ask the police to clear the room at this time, and we will then go to our next witness. We will allow them to come back in, in a few minutes.

[The room was cleared.]

The CHAIRMAN. Before we go to witnesses 2 and 3, the last witness indicated to me in the other room, and I presume his affidavit will so state, that although he feels some of the raffle ticket moneys go for the announced purposes, he does believe that some of the moneys are skimmed off. They are not accounted for. Nobody knows the total amount of moneys and where they go. We are hopeful that he will clarify that in his affidavit, which we will get from him.

## STATEMENT OF WITNESS NO. 2, A WELDER [EAST]

The CHAIRMAN. Let me ask you if you are personally familiar with the witness who just testified?

WITNESS No. 2. No, I am not.

The CHAIRMAN. Have you ever seen him before?

WITNESS No. 2. Never.

The CHAIRMAN. I want to establish for the record that he is from a different geographical area than your own. We have obtained a broad geographical spread in the witnesses on this panel.

We will call you Witness No. 2. As I told the other witness, you may answer in generalities with respect to locations and other matters that might pinpoint your identity.

Could you begin by summarizing your job experience?

WITNESS No. 2. I have been a welder for approximately 15 years, and I have been a union member for approximately the same amount of time.

The CHAIRMAN. Do you have a firsthand knowledge of welders paying higher than standard rates for their union cards?

WITNESS No. 2. Yes, I have.

The CHAIRMAN. In how many instances?

WITNESS No. 2. Two that I know of.

The CHAIRMAN. How much in excess of the legal amount did these welders pay for their books?

WITNESS No. 2. One gentleman paid between $500 and $550 more than what the going price was.

The CHAIRMAN. In other words, he paid $500 to $550 more than what the going price for a book was. What was the then-going price for a book?

WITNESS No. 2. I think the fee then was $25 plus 3 months union dues.

The CHAIRMAN. What about the other one that you heard about? How much extra did he pay above what was the normal rate?

WITNESS No. 2. I heard it was $300 more.

The CHAIRMAN. Have you heard that a number of others pay a whole lot more than that for their books?

WITNESS No. 2. That is correct.

The CHAIRMAN. Is that generally known by the people in your industry?

WITNESS No. 2. Oh, yes.

The CHAIRMAN. And in your union?

WITNESS No. 2. Yes, indeed.

The CHAIRMAN. Have you ever been asked to take a welding test for someone else?

WITNESS No. 2. Yes, I have.

The CHAIRMAN. Did you do it?

WITNESS No. 2. Yes.

The CHAIRMAN. On how many occasions?

WITNESS No. 2. Two different occasions.

The CHAIRMAN. I understand these occasions were late 1977 and late 1981; is that correct?

WITNESS No. 2. That is correct.

The CHAIRMAN. Did the individuals who were supposedly being tested ask you to take the test for them in those instances, or did the foreman ask you?

WITNESS No. 2. The foreman asked me on one occasion, and the other welder asked me to take his on the other occasion.

The CHAIRMAN. Were you offered money or any other consideration to take the test?

WITNESS No. 2. Not for these ones.

The CHAIRMAN. Why did you take them?

WITNESS No. 2. Well, to help a man out.

The CHAIRMAN. Did you know of other persons being offered money or other consideration to take the tests for unqualified welders?

WITNESS No. 2. Not to my knowledge.

The CHAIRMAN. Have you ever worked at a nuclear powerplant?

WITNESS No. 2. Yes, I have.

The CHAIRMAN. As I understand it, you did on two different plants?

WITNESS No. 2. That is correct.

The CHAIRMAN. You say you took the test twice for other welders. Were either of these at a nuclearplant?

WITNESS No. 2. Both were at a nuclear plant.

The CHAIRMAN. Does not the Nuclear Regulatory Commission monitor these tests to insure that they are not compromised or they are not phony?

WITNESS No. 2. I have never seen an NRC representative in the welding test booth area at all.

The CHAIRMAN. As I understand it, you spent 5 years working in nuclear powerplants. Have you ever seen an NRC man in a testing booth?

WITNESS No. 2. Never.

The CHAIRMAN. Or even supervising a test, in any way, shape, or form?

WITNESS No. 2. Never have.

The CHAIRMAN. Has anything else of a questionable nature occurred during the tests you have taken or observed over the years?

WITNESS No. 2. The main thing, at one particular nuclear site, I took in excess of 30 welding tests in a 2-year period, yet you should only have to requalify once every 3 months.

The CHAIRMAN. So you are saying that you took 30 tests during a two-year period, and the qualification requirement was once every 3 months. So you are saying that the most you should have taken were about eight tests?

WITNESS No. 2. That is normal.

The CHAIRMAN. Did you assume that you were taking the test for other so-called welders?

WITNESS No. 2. You could assume that, yes.

The CHAIRMAN. You basically knew that, did you not?

WITNESS No. 2. Right.

The CHAIRMAN. Did the other welders know that as well?

WITNESS No. 2. I am sure they did.

The CHAIRMAN. So it is generally known that there are people who are really incompetent welders on the job that they are doing phony tests for?

WITNESS No. 2. Yes. You can see that in the type of welding that you happen to observe from time to time throughout the plants.

The CHAIRMAN. Who asked you to take these tests?

WITNESS No. 2. The welding foreman.

The CHAIRMAN. Did he tell you that these tests were for other people?

WITNESS No. 2. No, they did not.

The CHAIRMAN. But you knew what they were for?

WITNESS No. 2. Oh, yes, you can assume that.

The CHAIRMAN. Did the less qualified welders ever pay other welders to do difficult welds for them?

WITNESS No. 2. I am not aware of that ever happening.

The CHAIRMAN. So you assume they are just doing whatever they are assigned to do, whether they can do it or not?

WITNESS No. 2. That is correct.

The CHAIRMAN. In your opinion, are there many unqualified welders working at nuclear powerplants, at least on these two you worked at?

WITNESS No. 2. Yes, there are quite a few of them.

The CHAIRMAN. And you worked for about 5 years on those nuclear powerplants?

WITNESS No. 2. That is correct.

The CHAIRMAN. Have you seen shoddy work performed by these welders at nuclear plants?

WITNESS No. 2. Quite a bit of it.

The CHAIRMAN. Have you ever been asked by union representatives to buy the 50-50 raffle tickets?

WITNESS No. 2. On every job I have ever been on.

The CHAIRMAN. Have you ever failed to buy them?

WITNESS No. 2. No.

The CHAIRMAN. What happens if you do not buy them?

WITNESS No. 2. Well, they just forget to put you out to work the next time you go to the hall for a job.

The CHAIRMAN. In other words, it is difficult to get a job unless you are buying the raffle tickets; is that right?

WITNESS No. 2. That is correct.

The CHAIRMAN. Have you heard union officials threaten to lay people off if they do not buy raffle tickets?

WITNESS No. 2. Yes. They have verbally said that if you do not buy them, you must not want to work.

The CHAIRMAN. Has this been on an often basis, or just once in a while?

WITNESS No. 2. No, that is quite often.

The CHAIRMAN. Have you actually seen people laid off for failing to buy the raffle tickets?

WITNESS No. 2. Well, you could not really pinpoint it as to saying they were laid off because they did not buy them, but you can assume that is the reason they were laid off.

The CHAIRMAN. Have you ever worked as a transient in a local union?

WITNESS No. 2. Yes, I have.

The CHAIRMAN. How were you treated there?

WITNESS No. 2. Like a second-class citizen.

The CHAIRMAN. You said you were treated like a second-class citizen?

WITNESS No. 2. Yes.

The CHAIRMAN. What does that mean?

WITNESS No. 2. You are given the hardest jobs. They look down on you like you are a piece of dirt or something of that nature.

The CHAIRMAN. I take it, you are the first to be laid off too if any difficult times come?

WITNESS No. 2. Right.

The CHAIRMAN. Could you give us an example of being assigned to the toughest jobs?

WITNESS No. 2. You are usually given the dirtiest jobs, and usually quite a bit of the overhead welding——

The CHAIRMAN. Overhead welding is one of the dirtier jobs?

WITNESS No. 2. Right; it is the hardest.

The CHAIRMAN. That is because you can be hit by falling slag and falling parts?

WITNESS No. 2. Yes, and it is quite strenuous to perform those tasks.

The CHAIRMAN. Why, in your opinion, do the local unions freeze out transients from membership in the locals?

WITNESS No. 2. They represent votes that would take these business agents that pull these kind of shady deals and they would be thrown out of office.

The CHAIRMAN. You feel that the reason they freeze the transients out is, the transients represent votes that might kick present leadership out of office?

WITNESS No. 2. That is correct.

The CHAIRMAN. The National Labor Relations Act requires that nonunion members must be referred for work by the union on an equal basis with members. If so, why are welders paying such great sums from union cards for locals in distant locations where they will not even be working?

WITNESS No. 2. There are very few nonunion people who know this law is in effect.

The CHAIRMAN. In other words, they feel they can go to a local union and be assigned out to a job?

WITNESS No. 2. No, they do not know they are allowed to do this. When they do go there, why they are more or less intimidated by these people. They just tell them, "You have no union card. Hit the road. We can't put you out to work unless you do have a union card."

The CHAIRMAN. So it really does not matter what the law is on this score?

WITNESS No. 2. That is the general thought on it, yes.

The CHAIRMAN. What you seem to be saying is, as a practical matter, if you want to work, you have to have that union card?

WITNESS No. 2. That is correct.

The CHAIRMAN. Even though the law says otherwise?

WITNESS No. 2. Right.

The CHAIRMAN. Let me just ask you this. On these raffle tickets that you buy, have you ever won?

WITNESS No. 2. Never.

The CHAIRMAN. Have you seen people benefit from the raffle ticket money, the 50 percent supposed to go to the members who need help?

WITNESS No. 2. Just the local members.

The CHAIRMAN. You have seen some help go to local members?

WITNESS No. 2. Yes. They draw a certain amount of money each week.

The CHAIRMAN. Have you seen other people who have won on the raffles?

WITNESS No. 2. I know of one other fellow, who was a nonlocal member, who won this.

The CHAIRMAN. Do they ever report to you how much money has been collected on the raffles for the local?

WITNESS No. 2. Never.

The CHAIRMAN. They never even give you the totals?

WITNESS No. 2. No way.

The CHAIRMAN. Do you suspect that some of that money is being skimmed off by people having to do with the local?

WITNESS No. 2. You can pretty much judge by what they call 50 percent of it. You know that during busy times the amount of money that they figure is half of it should be way in excess of what they give you for winning it.

The CHAIRMAN. For winning, or in excess of what they give to the person who they may be helping under the raffle.

Witness No. 2. I do not know how much they really give to the man who is the local member. I guess they take care of him all right.

The Chairman. You have indicated you worked at two nuclear power plants. Which powerplants were those? Is that too specific?

Witness No. 2. I would say that is a little too specific.

The Chairman. Would these powerplants be east of the Mississippi?

Witness No. 2. That is correct in assuming that.

The Chairman. And they are presently operational?

Witness No. 2. Yes, they are.

The Chairman. Have you personally observed welds in those powerplants that were deficient?

Witness No. 2. I would say they were.

The Chairman. In significant and important areas?

Witness No. 2. Most of them is in important areas, yes.

The Chairman. Most of the welding in nuclear powerplants is pretty important, is it not?

Witness No. 2. I would say so.

The Chairman. Let me go to witness No. 3.

## STATEMENT OF WITNESS NO. 3, A WELDER [MIDWEST]

The Chairman. How long have you been a welder?

Witness No. 3. I have been a welder approximately 12 years.

The Chairman. Are you a member of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers?

Witness No. 3. Yes, I am.

The Chairman. Did you obtain your union card at the local from which you worked or from a local outside your area?

Witness No. 3. No, sir, a local where I was working, where I lived, and I got into it there.

The Chairman. As I understand it, this is a midwestern local?

Witness No. 3. Midwestern, yes, sir.

The Chairman. Do you know of anyone who did get his from a local outside his area?

Witness No. 3. Yes, sir, I do.

The Chairman. How many people do you know who obtained theirs that way?

Witness No. 3. I can think of approximately 15, without even trying.

The Chairman. Where did these welders get their union books?

Witness No. 3. Most of what I have seen go on was with the New Jersey area; South Carolina; western and eastern Pennsylvania; a lot of shop locals; Montreal, Canada.

The Chairman. Have you noticed that a number of these books seem to come from a Montreal, Canadian source?

Witness No. 3. Yes, sir. I noticed that quite a few were coming from there.

The Chairman. What did these people that you personally observed or know paid for their books?

Witness No. 3. Anywhere from $350 to $1,000 or $1,100, whatever the going price was at that particular place.

The **Chairman**. Were these prices well above the standard fee that would be charged by *any reasonable local*?

**Witness** No. 3. Yes, they were.

The **Chairman**. So you have had the same experience as witness No. 2 and witness No. 1?

**Witness** No. 3. Yes, I have.

The **Chairman**. Who referred these people to the outlying areas for purchase of their books?

**Witness** No. 3. Usually it was the top officials of the union in that area, the foremen, or somebody in power.

The **Chairman**. So you are saying, usually the top officials of the local where the worker applied for work?

**Witness** No. 3. Yes. If they wanted to help their man along.

The **Chairman**. You are talking about top union officials?

**Witness** No. 3. Yes, sir.

The **Chairman**. What would happen when these individuals secured their journeymen books from the outlying locals? What then happened?

**Witness** No. 3. A lot of them would come back to where they were sent from and where they wanted to go to work.

The **Chairman**. In other words, the original local that they applied to?

**Witness** No. 3. Yes.

The **Chairman**. And were referred out of?

**Witness** No. 3. Yes. They would tell them, "You would have to go to this place and get a union card, and then you can come back. We will take care of you and put you to work."

The **Chairman**. So they would subsequently assigned to jobs, then?

**Witness** No. 3. Yes, and if they played their cards right, they would be taken into these locals.

The **Chairman**. Then eventually, after about 2 years, they would be permitted to transfer their membership, and in that way they would avoid the 4-year apprenticeship; is that right?

**Witness** No. 3. Yes, sir.

The **Chairman**. Have you ever worked at a nuclear powerplant?

**Witness** No. 3. No, sir, but I am quite familiar with them and people who have worked on them.

The **Chairman**. And you have seen some of these people who are incompetent welders working in these powerplants?

**Witness** No. 3. Sir, I can say of one instance where I had a man working for me who claimed he was a welder. I gave him some welding to do, and he could not handle it. I took him off it. Approximately 2 months later, he went on a nuclear job, and it is more or less hearsay, but I heard he passed every test they had on that job.

The **Chairman**. Could he have passed them with the knowledge that he had?

**Witness** No. 3. No, sir. He could not have passed a plate test on the job I was on.

The **Chairman**. When you are talking about a "plate test" what do you mean?

**Witness** No. 3. Just a basic——

The CHAIRMAN. A base plate that really does not make any structural difference?

WITNESS No. 3. Right. A base plate, approximately ⅜-inch thick, just welding four passes at it.

The CHAIRMAN. That just means four dots on that, four welds on that plate, around the edge of it?

WITNESS No. 3. Just like running four stringers, maybe four inches long, then bending that and the test not breaking.

The CHAIRMAN. And he could not even do that?

WITNESS No. 3. No, sir, he could not have passed that.

The CHAIRMAN. And yet he went to work on a nuclear powerplant?

WITNESS No. 3. Yes, sir.

The CHAIRMAN. And he continued to work there.

WITNESS No. 3. Yes.

The CHAIRMAN. You say he passed all the tests there?

WITNESS No. 3. That is the understanding I got from people I talked to who were working with him.

The CHAIRMAN. So what you seem to be saying is, watching him and knowing his ability as a welder, he could not have passed those tests personally?

WITNESS No. 3. No, sir.

The CHAIRMAN. So somebody had to take the tests for him?

WITNESS No. 3. I would say so.

The CHAIRMAN. And that is something that occurs all the time, according to the other witnesses. Were you aware of that?

WITNESS No. 3. It seems to be basic knowledge: the majority of the jobs you go on, this is going to go on, and keep your mouth shut. If you do not like it, go someplace else.

The CHAIRMAN. As I understand it, you have worked at a fossil fuel powerplant, even though you have not worked at a nuclear plant?

WITNESS No. 3. Yes, sir. I have worked at fossils for almost 20 years.

The CHAIRMAN. Do you have any knowledge of any welding tests being faked at any of the powerplants where you have worked?

WITNESS No. 3. Yes.

The CHAIRMAN. Could you tell us about them?

WITNESS No. 3. I could again think of approximately 6 or 8 incidents where people were running maybe 5 or 10 coupons for people who did not even have to take the test, and then these people would be put on as welders.

The CHAIRMAN. As I understand it, there were various fellow workers, who were competent welders, who bragged to you each time about running off six or eight test coupons for other people; is that right?

WITNESS No. 3. Yes. It was more or less a big joke. "Well, I ran off six or eight coupons. That guy is a welder, and that guy is a welder."

The CHAIRMAN. These are coupons [indicating]; these are what you are referring to?

WITNESS No. 3. Yes, sir.

The CHAIRMAN. These are test welds?

WITNESS No. 3. Yes, sir. That is what they call a tube test.

The CHAIRMAN. This one in my left hand is one that passed the test, and this one in my right failed the test, according to the statements.

WITNESS No. 3. According to the statements. I would not know, without looking inside them.

The CHAIRMAN. Did you personally take the test for other persons?

WITNESS No. 3. No, sir. I have had a reputation for being straight, and I think they shied away from asking me that.

The CHAIRMAN. What happens to the unqualified welders who have ringers take the test for them?

WITNESS No. 3. They are classified as certified pressure welders, but then they are given jobs where they do not have to get into this. They are given less demanding jobs, where they do not have to get into the pressure welds, where somebody could possibly check them and say, "How did you pass that test when you're putting a weld like that in there?"

The CHAIRMAN. Are you personally familiar with the raffle tickets?

WITNESS No. 3. Yes, I am.

The CHAIRMAN I guess everybody is familiar with those.

WITNESS No. 3. Yes, sir.

The CHAIRMAN. Do you buy them every week, too?

WITNESS No. 3. When I am in areas where they have them, I have to buy them. You might as well say I have to buy them.

The CHAIRMAN. There are some areas where they do not have them?

WITNESS No. 3. Yes.

The CHAIRMAN. Where are those areas, generally?

WITNESS No. 3. Well, through the Midwest and out West where I have worked I have not run into these raffle tickets.

The CHAIRMAN. But basically in the Eastern part of the country, they are everywhere?

WITNESS No. 3. Yes.

The CHAIRMAN. So you have had to buy them also?

WITNESS No. 3. Yes, sir.

The CHAIRMAN. Did you feel compelled to buy them?

WITNESS No. 3. Yes, sir, because it was more or less put to you: you either buy them or you'll probably get laid off early.

The CHAIRMAN. So in order to keep your job, you had to buy the raffle tickets?

WITNESS No. 3. Yes.

The CHAIRMAN. Did they ever explain to you where the money went from those raffle tickets?

WITNESS No. 3. They explained that half of the money goes to health and welfare for sick and distressed members of the local.

The CHAIRMAN. And the other half was supposed to go to the person who wins?

WITNESS No. 3. The other half would go to the winner, yes.

The CHAIRMAN. Did you suspect that some of the money did not go to either?

WITNESS No. 3. Yes, sir. I have always suspected that. If you have approximately 3,000 people working in a local, and they are more or less telling everybody to buy 5, that is $15,000.

The CHAIRMAN. That is $15,000 per week, is it not?

WITNESS No. 3. That would be $15,000 per month.

The CHAIRMAN. That is if you are using $1. If you are using $5 for the transients, it is a lot more than that, is it not?

WITNESS No. 3. Yes, sir, but when the winner gets $3,800 or $4,000. So I could see where money could have been skimmed real easy off this.

The CHAIRMAN. Is it generally thought by the workers that the monies are skimmed?

WITNESS No. 3. Yes.

The CHAIRMAN. In other words, you are not misled by it; you know what is happening, you know that somebody is taking that money and using it?

WITNESS No. 3. Yes, sir.

The CHAIRMAN. Who do you suspect those people are?

WITNESS No. 3. Well, it would have to be your top union officials who have control over taking this money in.

The CHAIRMAN. Did they ever give you an accounting of it?

WITNESS No. 3. I have never been in a position where I could see an accounting of it.

The CHAIRMAN. Have you ever seen a formal report or even a sheet of paper saying how much money they have taken in this month on the raffle?

WITNESS No. 3. Well, in one area on the raffle tickets they would have the previous winner, the last month's winner, and what we won. So if he won $2,000, you had to assume that they took in $4,000.

The CHAIRMAN. Let me ask both of you. Is there any indication to any of you fellows, or do you ever get the impression that maybe there are underworld influences working in this area as well, or is this just union leaders doing it?

WITNESS No. 3. Sir, I have been bouncing around this country for a long time, and I definitely feel there is.

The CHAIRMAN. You feel there are underworld influences working on this raffle situation, and also on the excessive cost of purchasing books?

WITNESS No. 3. Yes.

The CHAIRMAN. Do you feel the same way, Witness No. 2?

WITNESS No. 2. That is correct; I do.

The CHAIRMAN. So you feel that this may not be just union leaders; this may be organized crime as well?

WITNESS No. 3. Yes, sir, I feel that way.

The CHAIRMAN. Let me ask the Capitol Police to clear the room for the last time, and then we will go to the last witnesses for this morning. We appreciate your coming, and we appreciate your courage in coming to talk about these problems, and we hope we can help you with them.

[The room was cleared.]

The CHAIRMAN. Let us call the hearing to order.

Our next witnesses are Gary and Wayne Boring, of Indiana County, Pa. The Boring brothers are members of the National Transient Division of the Boilermakers, who have worked for the last several years through local 154 of the Boilermakers in Pittsburgh. We will proceed in the following manner for this segment of the hearing. Mr. Gary Boring will deliver a statement to the committee, after which we will question him on his testimony. Then we will question Mr. Wayne Boring regarding a letter on this subject that he wrote the committee staff on May 6, 1982.

Gary, we will ask you at this time to proceed with your testimony.

## STATEMENT OF GARY BORING, A WELDER FROM INDIANA, PA.

Mr. GARY BORING, I am Gary Boring of Indiana, Pa. I am accompanied by my brother, Wayne. I have been a certified welder for approximately 10 years. My brother, Wayne, has 18 years of experience at the same craft.

I am here today to tell you about union corruption in the welding trade and the refusal or inability of Federal investigative agencies to do anything about it. The abuses I am going to talk about—the sale of union books at extortionate prices to persons both qualified and unqualified to hold those books, and faked welding tests to cover up for unqualified people—are leading to shoddy welding practices and creating a dangerous situation for anyone living close to the powerplants and chemical plants where these practices go on.

Most of the observations I have made about these illegal and unethical welding practices involve local 154 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers, in Pittsburgh, Pa. I am not and never have been a member of that local, but I worked out of local 154's hiring hall for the past 10 years as a member of the international union's national transient division. Although my experience with these problems has come in and around the Pittsburgh area, let me state at the outset that it is common knowledge among virtually all welders I know that these same abuses go on all over the country.

First of all, I would like to point out that I have no one particular weld that I can go to and say it is a bad weld. I am going to be talking about inconsistent workmanship that can lead to problems anyplace, anytime. There are so many unqualified welders in our trade that you just do not ever know where a problem is going to pop up.

I first reported the abuses I have seen to the Nuclear Regulatory Commission in 1979, but nothing was done, and that has been the case with the other agencies I have dealt with since that time. These agencies just do not want to take on the powerful forces that they will have to lock horns with if they do something about these abuses.

My reason for filing with the NRC in 1979 was to point out the possibilities and probabilities of what could happen to the nuclear plants if I did not come forward with what I knew was going on. I could see how union books were being given out, with little or no regard for qualifications, and how welding tests were being faked, and how easy it was for welding tests to be compromised by the persons who were assigned to administer these tests, and how easy it was for people to cheat on those tests. I believe there are other people who have come forward since I have filed.

Another aspect was security or, rather, the lack of it. I am not against nuclear power; it is inevitable. However, I am against irresponsibility and a lack of safeguards to prevent another Three Mile Island. I am the father of six children, and I want to see to it that my children and children nationwide have a future that is preserved. We can only do this by making responsible people make responsibile decisions, and that can only be attained by approaching problems with an open mind and searching out the faults and correcting them before they become accidents or major catastrophies.

Another topic is alleged illegal union books. The buying and selling of union books is widespread in the boilermaker trade. I, as a boilermaker, feel my trade is a skilled craft. My trade is classified by the Federal Government as a skilled trade. At local 154 in Pittsburgh, Pa., there was a condition imposed on individuals making application to use the referral system at the local. The condition being, in order to be sent out to work, you must first have a union book. This set the stage for book buying and selling throughout the United States and Canada. There are armies of agents and middlemen involved in this scheme. There were men sent to different shop locals, shipyard locals, and field construction locals, even to the laborers locals or ornamental iron workers locals to buy these books.

I am sure that an investigation will show that no objective criteria and no thought of qualification was given in most cases for the purchase of these union books. As a result of this, I believe it constitutes featherbedding. I believe it would be found through a full-scale investigation that, in a lot of cases, the middlemen made money and the books were sold for a higher price than the bylaws or constitution of the local prescribes. Where these moneys went and who actually derived money from these book sales can only be ascertained by a full investigation.

I have already submitted evidence to the proper authorities that books were given for personal favors done for business agents, and I would like anonymity in this portion of the testimony until this case is properly investigated and all the facts can be ascertained.

Social security work history will show that the individuals in many cases never worked in the jurisdictions where the books were bought and sold. Many individuals who obtained books are being passed off to contractors and customers as journeymen boilermakers when, in fact, their background and credentials do not support their being passed off as qualified boilermakers.

Apprentices are subject to graduated income for a 4-year period. Book holders receive full scale wages, at journeymen rates. Since complaints have been registered, one positive step has been taken in the right direction, that being in other locals, not local 154, they have recently imposed an 8,000-hour sanction on an applicant for referral before he can obtain journeyman rates. Nonetheless, it does not negate the fact that the comsumers, through utility rates, have been made to pay nearly extortionate rates for years and years and years. One company in particular was told of this, that company being Pennsylvania Electric Co., Johnstown, Pa., and General Public Utilities. As you can see, a journeyman welds, burns, fits, and is otherwise capable of performing journeyman work. So, welding is not the only thing that could jeopardize the fossil fuel plants for the nuclear-power industry. To say these individuals are supervised 100 percent of the time is both assinine and absurd.

The next topic will be the raffle and 50-50 ticket sales. These tickets sell for $1 each, and the winner is supposed to win one-half of what is taken in. They are supposed to be drawn at a monthly meeting at the local union hall. The other one-half of the money is supposed to go into a fund for sick and distressed members, which pays anyone covered by the Weaver & Grose Health and Welfare Plan, the plan administrators. These individuals receive a sum of money each week for disability.

The NLRB case against local 154 proves that discrimination can and has caused many ticket buyers to become ineligible for health and welfare benefits, thus canceling out any benefit derived from ticket sales for those individuals. At high points of employment at local 154, there has been as high as 2,000 to 3,000 people employed. At this time, I would like to again point out that I am a husband and a father of six, and I have charities and a church to contribute to, and I do not get harrassed or threatened by any one of them when I miss a contribution. Such is not the case with the tickets under discussion here today. I have been harrassed. I have been told my next job depends on my buying these tickets. I have seen other men bullied, badgered, and coerced into buying these tickets, under the threat of early layoff, poor job assignments, trumped up reasons to be fired, and for fear of not being referred out of the union hall again. Lists are kept of who buys and who does not.

Tickets were, in the past, sold by stewards, assistant foremen, or pushers on the job. I personally have had tickets attached to my check in packages of five tickets. One particular job where this occurred was at the Babcock & Wilcox generating station in Homer City, Pa. Another time, myself and others were told by the steward on the job that it is highly suggested by the business agent that if you want to make the next job, you will buy the tickets. This occurred in Shawville, Pa. In this case, there were ticket stubs left on the job—bags of them, in some instances—that were never turned in to the union hall. Therefore, the ticketholder had absolutely no chance of winning.

I would further add that I am not in a position to investigate or ascertain how much money is taken in or otherwise handled in the ticket sales. But, Senator, I would like to say that a ring of fear surrounds these ticket sales. I have personally been harrassed by the business manager about my questioning the 50-50 ticket sales.

This information, along with other allegations, has been turned over to the FBI, the labor department in Pittsburgh, the NLRB in Pittsburgh, the U.S. attorney's office in Pittsburgh, and the Organized Crime Strike Force of Philadelphia. As of yet, there has been no definite action taken. The whole case was squashed by some agency or agencies or office within the Federal Government. This is why I am here today, to give you, Senator, the opportunity to investigate just how far political corruption goes.

One more point that I would like to bring out is the fact that we have Republicans and Democrats on this committee, and one thing you have in common to this case is that you would react the same way I have. If a high-ranking member of the Executive Office was to tell you that you will buy tickets from that executive in order to be a party to this hearing today, you would react the same way. It is clear to me that all people cannot get along all the time; that is evident by the current budget battle. There has been, I believe, a crime committed here in my case, and I am asking this committee to direct the proper agencies to conduct a "gloves off" investigation.

The next topic is the NTM or NTD case. We have filed charges with the Labor Department against the International Brotherhood of Boilermakers to bring them into compliance with the Labor Management Reporting and Disclosure Act, and to have the election of officers and agents brought about. That case is in Kansas City, in the solicitor's office; it has not yet come to trial. I know of no court calendar it is on, yet the solicitor's office and the U.S. attorney's office have told us that the national transient division is nothing more than a slush fund for the international union. The status of this case is unknown to me at this time, even after my attorney has requested the status of the case on numerous occasions.

It is beyond me how Government officials could allow a situation like this to exist without effectively pursuing it through the courts. This country's policy toward the Solidarity Union of Poland is justified and unequaled by any step taken to defeat oppression, yet the different Government agencies will not clear up the inequities and the obvious abuses that go on in my union here in the United States. I find this appalling and repugnant. We have laws and I, Senator, did not write them. Congress, in its wisdom, found a need to protect individual rights, freedoms, and the pursuit of happiness. Yet, after all that I have been through, the only thing I can say is, What the hell do you do when no one will enforce the law or do their assigned jobs to correct it.

This case is on file with the Labor Department and the Justice Department, and I am sure any one of you Senators on the panel can obtain the records and see how this case has been boggled purposely and intentionally put off or delayed. I would ask that an investigation be conducted so that all the facts in this case can be aired. I believe there are criminal charges that would arise from an investigation, and this is why the Government is letting this case die in a filing cabinet somewhere between here and there.

The NLRB is another point. The National Labor Relations Board should have more investigative power as far as access to examining records of any kind so as to better ascertain whether a complaint exists and to what extent the complaint goes. Through my dealings with the NLRB, I find it a shame at what I had to go through just to get the complaint investigated. I would give credit to certain individuals at the board and condemn the actions of others. We went through something at the Board that cannot be condoned. Access to the board should be opened to individuals without having to study law to do it.

On the U.S. attorney's office, the U.S. attorney's office is to blame for not carrying on an investigation and not moving forward with the material it had at its disposal and stifling the Labor Department's investigation and letting cases die.

The FBI. They failed in that they did not follow up on material given them by the organized crime strike force involving case material that I and others personally gave information on. I was also told prior to that information being turned over to the FBI that there was enough evidence to warrant a complete full-scale investigation. I was told that they, the members of the strike force, would rather cut off their arms than give it to the FBI because they knew it would die in the files. What this suggests to me is a bunch of irresponsible and undedicated people, fighting to see who can climb the ladder to success the fastest, at the expense of the citizen who goes to them seeking help. Instead of working together to bring about a swift and judicious judgment, they spend more time fighting among themselves than the actual time spent on the complaint. The FBI should be and should have been investigating, for example, a deal offered us by the union to admit us if we dropped our charges before the labor board, the Department of Labor, the FBI and all other Government agencies. The people at the board told us, "Don't seek justice. There is none." And if it becomes necessary, I have already named them, the individuals, to the strike force and other Government agencies.

The CHAIRMAN. Thank you, Mr. Boring. As you know, we have a lot of information on this matter and on the Government forces as well. The more I look at this case, the more I get damned mad about it. I appreciate your being here today.

Would you give us a brief summary of your experience as a welder?

Mr. GARY BORING. I have been welding for around 10 years.

The CHAIRMAN. You have been a boilermaker since 1969?

Mr. GARY BORING. Since 1969; right.

The CHAIRMAN. Where are you currently employed?

Mr. GARY BORING. For Babcock & Wilcox Co. at Conemaugh Station, Huff, Pa.

The CHAIRMAN. What specific construction jobs have you worked on in the years since you started obtaining your work referrals from Local 154 of the Boilermakers' Union in Pittsburgh?

Mr. GARY BORING. I worked throughout the local, and a lot of it has been at the Conemaugh Station, the Keystone Generating Station, Homer City. I worked in Brilliant, Ohio, and Stratton, Ohio, which are all out of 154.

The CHAIRMAN. You worked on Conemaugh and Keystone mainly, though?

Mr. GARY BORING. And Shawville, yes.

The CHAIRMAN. Over the past 3 years, you have filed some very serious charges about officials of local 154 with various investigative agencies of the Federal Government. Among the most serious charges you filed were those that you made to the Philadelphia strike force investigators on March 25, 1980. I will put that into the record as Boring Exhibit No. 1, and that contains your interview with the strike force investigator.

[Boring Exhibit No. 1 follows:]

BORING Exhibit 1

**U.S. DEPARTMENT OF LABOR**
**Office of the Secretary**
**Office of Inspector General**

**REPORT OF INTERVIEW**

Date of Interview March 25, 1980

Gary Boring, Wayne Boring, and Vernon Boring were interviewed on the above date, at 429 Water Street, Indiana, Pennsylvania, by the undersigned who identified themselves as Special Agents of the Office of the Inspector General, U.S. Department of Labor. The Borings were advised that the undersigned were conducting an official investigation pursuant to responsibilities delegated to the Inspector General and their cooperation was solicited. The Borings voluntarily furnished the following information.

The Borings were interviewed in an attempt to isolate numerous charges and allegations they had made in several letters to the Office of the Inspector General in regard to their employment in the Local of the Boilermakers in Pittsburgh, Pennsylvania.

The Borings stated that they had recently hired Tom Croawford, a former Assistant U.S. Attorney in the Pittsburgh, U.S. Attorney's Office to handle their grievances and legal proceedings against Local Crawford had previously conducted a grand jury investigation into Local of the Boilermakers.

The Borings main complaint dealt with the selling of union memberships, or as they referred to, the selling of union books. The Borings stated that Union Books could be purchased through the following unions:

Local Union , NJ
Local Union Philadelphia, PA
Local Union North Jersey
Local Union Montreal, Canada
A Local (number unknown) in Toledo, OH
Local Union , PA
Local Union , SC
A Local (number unknown) of , NY

The Borings indicated that the purchase of union memberships by individuals in the Pittsburgh area was usually done at a local outside of Pittsburgh. They stated that if the telephone toll records of local 154 in Pittsburgh for . were checked that the toll records

Roger E. Riedley M R Gallknecht

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|---|---|
| Roger E. Riedley, Special Agent | Date Dictated 3/26/80 |
| By Melvin R. Gallknecht, Special Agent | Date Transcribed 4/25/80 |
| At Philadelphia, Pennsylvania | File No. 31-7244-0401 |

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would indicate times that books were bought at other unions and this could be corroborated by union memberships of individuals in the Pittsburgh are who purchased books during the same time frame. [redacted]

The Borings provided the agents of the Department of Labor with numerous individuals who purchased books. These names were provided in correspondence given to the agents at an earlier date. The Borings indicated that an individual by the name of [redacted] of Local 329 in Philadelphia, Pennsylvania, was the contact man in Philadelphia for the purchase of Boilermakers memberships. [redacted] is a friend of [redacted] Business Manager of the Local [redacted] in Pittsburgh. [redacted] is the Business Manager of Local [redacted] in Philadelphia, Pennsylvania.

An individual by the name of [redacted], from the Pittsburgh region purchased a book in Philadelphia. An individual by the name of [redacted] can provide information regarding the purchase of books in the Philadelphia Local 329. He is a reliable witness and would be cooperative. An individual by the name of [redacted] from [redacted] New Jersey, has apparently had several problems with [redacted], Business Manager of Local 329 in Philadelphia. Fisher had hired his own legal counsel to handle the problems but never pursued the problem through the courts to an end.

The Borings stated that the individual to contact in Charleston, South Carolina Local [redacted] was an individual by the name of [redacted] a/k/a [redacted]."

An individual by the name of [redacted] and [redacted] purchased books through Local 689 in Charleston. An individual by the name of [redacted] also purchased the books through Local 689.

An individual by the name of [redacted] is the individual who makes contact with the Montreal, Canada local to help purchase books. An individual by the name of [redacted] of Camden is the individual to contact in the Camden region to purchase a book.

The Borings indicated that for anyone in the Pittsburgh area to purchase a Boilermakers books must have it approved by [redacted]."

A [redacted] of North Jersey, and associated with Local union 801 is an individual who will talk about the purchase of union books in that area. In [redacted] New York, an individual by the name of [redacted] and [redacted] also purchased books. [redacted] and [redacted] bought books through the Montreal, Canada union and were said to have paid $1000 for each of the books.

[redacted], living near Toledo, Ohio, would be the individual to contact regarding the purchase of books in the Toledo, Ohio area.

The Borings stated that if they were able, they would attempt to get an individual in the position to purchase a book. They stated that many of the Boilermakers in the Indiana area hang around the White Tower-Bar-in Seward, Pennsylvania. They also frequent the Roadway Bar in Indiana. In the Kittanning area, many Boilermakers frequent Al's Town and Country Bar, which is next to the courthouse.

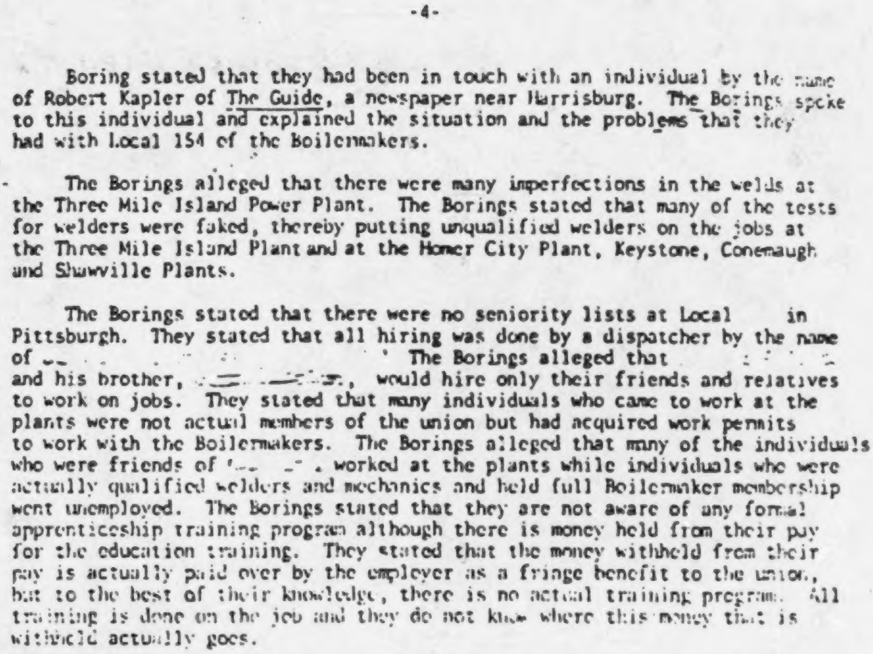
The Borings worked with an individual by the name of of Bellmawr, New Jersey. He is an individual who can be trusted and knows of the detail of book purchases in the North Jersey unions.

An individual by the name of , of of Charleston, South Carolina, phone (803) , was offered a job in the mafia by

The Borings stated that they did not have much information regarding the Health and Welfare Funds. They had all received copies of all forms 5500 of 1976 through 1978 but had not done a thorough analysis of these records. They stated that an individual by the name of was a Trustee for the Health and Welfare fund but that he stated that he was not going to go to jail for these bastards and got out of the fund.

The Boilermakers in Pittsburgh Local maintain a Social Fund. The Borings instituted a suit and the Labor Board's (in Pittsburgh) ruling was that the Social Fund was illegal.

The Borings stated that once a month the shop steward on the job that they were working at would come to them and order them to purchase a 50-50 plan monthly drawing. The drawing was for the aid of the boilermakers sick fund for the benefit of sick members. The price of each ticket was $1.00. The Shop Steward insisted that each individual buy five (5) tickets per month. The Borings stated that on several occasions, they found the stubs for tickets in plastic bags thrown in trash cans. They stated that these tickets were never deposited into the drawing can with the rest of the tickets. The Borings also stated that if an individual working under the Boilermakers Local 154 did not purchase these 50-50 plan monthly drawings would be laid-off in the near future. This was also told to the agents of the Department of Labor by several other Boilermakers. The drawings were supposedly held at the union hall in Pittsburgh, Pennsylvania. Individual members of the Boilermakers have never seen an accounting of the 50-50 plan monthly drawing and feel the cash is not accounted for correctly. They are also suspect of members who do receive the benefits. On occasion, individuals who picked up 50-50 tickets but had not paid for them had their pay checks held until payment was made. The tickets have also been stapled to individuals paychecks in order to get tickets to everyone.



-4-

Boring stated that they had been in touch with an individual by the name of Robert Kapler of The Guide, a newspaper near Harrisburg. The Borings spoke to this individual and explained the situation and the problems that they had with Local 154 of the Boilermakers.

The Borings alleged that there were many imperfections in the welds at the Three Mile Island Power Plant. The Borings stated that many of the tests for welders were faked, thereby putting unqualified welders on the jobs at the Three Mile Island Plant and at the Homer City Plant, Keystone, Conemaugh and Shawville Plants.

The Borings stated that there were no seniority lists at Local [redacted] in Pittsburgh. They stated that all hiring was done by a dispatcher by the name of [redacted] The Borings alleged that [redacted] and his brother, [redacted], would hire only their friends and relatives to work on jobs. They stated that many individuals who came to work at the plants were not actual members of the union but had acquired work permits to work with the Boilermakers. The Borings alleged that many of the individuals who were friends of [redacted] worked at the plants while individuals who were actually qualified welders and mechanics and held full Boilermaker membership went unemployed. The Borings stated that they are not aware of any formal apprenticeship training program although there is money held from their pay for the education training. They stated that the money withheld from their pay is actually paid over by the employer as a fringe benefit to the union, but to the best of their knowledge, there is no actual training program. All training is done on the job and they do not know where this money that is withheld actually goes.

The CHAIRMAN. Would you summarize for the record what you told the investigator in that interview?

Mr. GARY BORING. I told the investigators about 50-50 sales. Also included in that was deferring people from jobs to do work for agents of the union.

The CHAIRMAN. You are saying diverting union workers to work on private business property of local 154 officials?

Mr. GARY BORING. Yes, sir. The one instance I brought out, and I believe it was common knowledge at that time, was an interest that the business agent had at the Colonial Inn.

The CHAIRMAN. As I understand it, you also told them about the illegal book selling and the purchase of illegal books?

Mr. GARY BORING. The illegal book selling was discussed at length with the strike force officials.

The CHAIRMAN. Did you provide the strike force officials with a list of welders who had allegedly bought union books at other Boilermakers locals but were working presently for local 154?

Mr. GARY BORING. Yes, sir. Approximately 35 to 40.

The CHAIRMAN. I would introduce at this time Boring Exhibit No. 2, which is a list of names we have sanitized.

[Boring Exhibit No. 2 follows:]

[illegible] BORING EXHIBIT #2

Local # [illegible]

687
687
687
687
687

175
329
687
687
687
271
687

329
329
329
329
329
329
329
329
271
271
271
271 KITTANING
271

687
687
271
636
636
636
175
687
687

---

Why after taking these members in did the 687 building fund start?

Check on local 329 as far as being a "dummy local".

4-24-78-Jack Macdonald made Jack Crawford an assistant foreman
How does the union Rep. appoint supervision?
How can the Union Rep. fire you?
If there is not gratuity involved, why can Jack Doyle pick his own supervisory crew and be transfered from job to job on almost any job he is General Foreman on?
Schneider job April 1977, Homer City-men layed off and the day of the layoff two men come back 3 hours late after llunch and passed a bottle of whiskey to Bob Jezorski. Jerry Blakley said "a little pay-off, huh!" and he was told "you see who's staying don't you?".

The CHAIRMAN. How many names were there on the list that you gave to them?

Mr. GARY BORING. Approximately 35.

The CHAIRMAN. Did any of the workers whose names were on the list pay prices in excess of the legitimate charge for these union books?

Mr. GARY BORING. In a lot of the cases, yes, sir.

The CHAIRMAN. Did the strike force ever contact these people?

Mr. GARY BORING. Only around four of them, I believe.

The CHAIRMAN. They did not contact all 30 members?

Mr. GARY BORING. No, sir, they did not.

The CHAIRMAN. Did you recall the names of the strike force investigators?

Mr. GARY BORING. Yes, sir: Roger Riedley and Mel Gudnecht.

The CHAIRMAN. They were Labor Department representatives on the strike force, as I understand it; is that correct?

Mr. GARY BORING. My understanding was, that is the organized crime strike force in Philadelphia.

The CHAIRMAN. Their report to their superiors in Washington on this matter, dated July 3, 1980, stated:

> At this date, there appears to be substance to the three allegations outlined above: 1. Membership selling [29 U.S.C. 501(c)]—Embezzlement; 2. 50-50 monthly plan [18 U.S.C. 1951]—Extortion; 3. Reconstruction of the Colonial Inn [19 U.S.C. 186]—Taft-Hartley.

It would follow that the strike force investigators or their superiors should want to continue to work closely with you, since the investigators found your charge to be "of substance." At least, that is the way it seems to me. Did any Labor Department investigator ever again contact you about your charges, following the submission of this report on July 3, 1980?

Mr. GARY BORING. The only contact I had, Senator, was when the strike force told me the last time that it would be turned over to the FBI in Pittsburgh.

The CHAIRMAN. Then I will introduce at this time Boring Exhibit No. 3, from the Labor Department.

[Boring Exhibit No. 3 follows:]

| | | |
|---|---|---|
| Boilermakers Lodge<br>[redacted] Pennsylvania | VIOLATIONS:<br>BORING #3 | BY:<br>R.E. Endley, S/A<br>AT:<br>Philadelphia, PA<br>STATUS:<br>Closed |

Onsite field investigation: From: 2/14/80 To: 7/3/80

SYNOPSIS:

PREDICATION

This case was opened at the direction of the Philadelphia Strike Force Attorney based upon information provided by a confidential informant. The information provided alleged that a Boilermakers Union membership could be purchased in Montreal, Canada, through , a nationally powerful boilermaker union official from Pittsburgh, Pennsylvania, for a price far in excess as so stated in the by-laws and constitution of the Boilermakers Montreal Lodge.

RESULTS OF INVESTIGATION

The confidential informant was interviewed on October 3, 1979 (Exhibit 1A) and November 16, 1979 (Exhibit 1B). During those interviews the informant explained how a National Transit Mechanics membership in the Boilermakers could be purchased. The purchase would be effected through a Boilermaker Lodge in Montreal which would be arranged by Business Manager of Boilermakers Lodge of Pittsburgh, Pennsylvania.

has been identified as an associate of organized crime in the Pittsburgh area by the Bureau of Alcohol, Tobacco and Firearms (Exhibit 2), the Pennsylvania Crime Commission (Exhibit 3) and Thomas Crawford, a former Assistant U.S. Attorney (Exhibit 4A).

The informant desired to carry out the membership buying scheme with Department of Labor funds while employed as an operative with a stipulated payment agreement. The informant agreed to wear a body recorder and record the entire transaction.

The book buying scheme was not carried out due to the statutory inability of the Department of Labor to provide the necessary funds. (Memos to Ronald Goldstock, Exhibit 5A, 5B).

| | | |
|---|---|---|
| DISTRIBUTION:<br>1 - N.O.<br>0 - Case File<br>1 - S/F Atty-in-Charge w/o attachments | | APPROVAL: GROUP LEADER<br>APPROVAL: OPERATIONS<br>APPROVAL: DIRECTOR |

This document is the property of the Office of the Secretary, OIG. Its contents are not to be disclosed to unauthorized persons.

In January of 1980, Gary Boring contacted the Philadelphia Strike Force and related allegations of wrongdoing by the Boilermakers Lodge one of which was union membership sales (Exhibit 6A).

Boring's allegation of union membership sales was identical to, and was through the same Boilermaker Lodge which the confidential informant planned to make his initial contact in his membership buying scheme.

The two sources of independent allegations regarding membership sales prompted an interview of Gary Boring and his brothers, Wayne and Vernon, in March of 1980 (Exhibit 6B, 6C). The three brothers are National Transit Mechanic Members of the International Brotherhood of Boilermakers of Kansas City, Missouri.

After analyzing the information provided by the Borings, three distinct areas of possible criminal violations surfaced.

The Borings charged was the key man in the Eastern United States in arranging the purchase of Boilermaker memberships. The Borings stated usually arranged for an individual living in the Pittsburgh, Pennsylvania area to purchase a membership through one of the following Boilermaker Lodges:

Lodge #50, Haddonfield, NJ
Lodge #329, Philadelphia, PA
Lodge #801, Northern New Jersey
Lodge #271, Montreal, Canada
Lodge #656, Titusville, PA
Lodge #687, Charleston, SC
Lodge #unknown, Oswego, NY

The Borings allege that by enabling an individual to purchase a membership in the Boilermakers the individual become ingratiated to also serves his union by keeping Lodge membership rolls static. Once the individual is a Boilermaker, even though through a distant lodge, he is then eligible to be employed in Lodge jurisdiction by being granted a work permit by . The Borings allege payoffs are made at all levels of the purchase (distant lodge officers are conspirators in the scheme) and subsequent employment. The present wage of Boilermakers in Lodge jurisdiction exceeds $13.00 per hour making it worthwhile to purchase a membership with a guarantee of subsequent employment in the area of the purchaser's residence.

The Borings have provided a list of individuals employed and residing in the jurisdiction of Lodge who have purchased membership in Lodges other than (Exhibit 7).

To date, two individuals have been interviewed who have purchased memberships. Both individuals were reluctant to discuss the matter of their Boilermaker membership (Exhibit 8A, 9). Actual verification of the membership sales would have to be corroborated by interviewing all persons alleged to have purchased memberships as well as reviewing membership rolls at the lodges named as participating in the scheme.

The second Boring allegation of substance appears to be a "50-50 Plan Monthly Drawing" conducted by Local The plan is for the benefit of sick members of Local and is unfunded.

Several Boilermakers interviewed who have worked under the jurisdiction of Lodge stated they were forced to purchase five (5) one dollar tickets monthly in order to retain their employment (Exhibits 6C, 8, 10, 13). Any Boilermaker who did not purchase the tickets was laid off at the first opportunity.

The Borings stated they had found the stubs of the tickets in the trash at the job sites, which indicates that the stubs were never made available for the drawing (E-6C, 13). (A ticket for the drawing may be found in Exhibit 11.) The Borings allege that cash is not accounted for in an acceptable manner and that persons receiving benefits may not be eligible for such. They also stated that individuals who received tickets but who had not paid for them had their paychecks withheld until payment was made. The Borings also noted that on occasion the tickets were stapled to an individual's paycheck (Exhibit 6C). The Borings cannot corroborate their suspicions of mishandling of the fund accounting. The above tactics, if actually employed, may be violations of the Hobbs Act.

The third allegation of the Borings relates to the purchase and remodeling of the Colonial Inn in Indiana, Pennsylvania. , according to the Pennsylvania Crime Commission, was a partner in the Inn with known organized crime figures (Exhibit 3). The Borings charge that several Boilermakers actually remodeled the Inn while on the payroll of Foster-Wheeler, a contractor under a collective bargaining agreement with Local (A list of the individuals involved in the remodeling are provided in Exhibit 6B).

The Borings also contend other individuals, not members of the Boilermakers Lodge were offered membership in that lodge for their assistance in the remodeling (Exhibit 6B). The above allegations, if proven would constitute violations of 29 U.S.C. 186. , a boilermaker member of Lodge #329 in Philadelphia, corroborated the Borings and the confidential informant's allegations regarding the membership sales (Exhibit 12). , also provided information regarding possible Taft-Hartley violations with officials of Lodge

#329. stated many individuals from Pittsburgh have joined Lodge #329 in Philadelphia, Pennsylvania, but returned to Pittsburgh to work under Lodge jurisdiction (Exhibit 12).

The Borings told of raffles conducted at the work sites for handguns. The Bureau of Alcohol, Tobacco, & Firearms conducted an investigation into the giving of guns to Business Agents from lodges outside of Pittsburgh by (Exhibit 5B).

At this date, there appears to be substance to the three allegations outlined above:

1. Membership selling (29 U.S.C. 501c) - Embezzlement
2. 50-50 Monthly Plan (18 U.S.C. 1951) - Extortion
3. Reconstruction of the Colonial Inn (19 U.S.C. 186) - Taft-Hartley

The Borings and Sceich (Exhibit 13) have also identified a ✓ formerly a Business Agent of Lodge and presently an international organizer with the Boilermakers International in Kansas City, Missouri, as being involved in numerous instances of wrongdoing.

Mobley has been identified as stealing a large quantity of supplies from the Homer City, Pennsylvania Power Plant construction site. The supplies along with union labor, being paid by the prime contractor on the job were used to build two houses which were sold for $25,000 (Exhibit 3).

Mobley also constructed a large boat at Beaver Falls, Pennsylvania, with the similar aid of materials and labor in the late 1970's. Mobley supposedly sold the boat for $500,000 in Florida, recently.

Thomas Crawford, a former Assistant U.S. Attorney in Pittsburgh, Pennsylvania has previously subpoenaed individuals before a Federal Grand Jury regarding the Boilermakers and stated that the testimony would be helpful in this case but refused to elaborate in order not to violate Rule 6(c) (Exhibit 4B).

The Borings have been to several Federal law enforcement agencies, members of Congress, NLRB, NRC and newspapers. Their actions have caused the Boilermakers Officials of Lodge to treat them with care.

The Borings have supplied this office with a considerable amount of correspondence and documents which will be made available if deemed necessary.

To date, no grand jury subpoenas have been issued in the Department of Labor, Office of Inspector General investigation nor has any contact been made with officers of any Boilermaker Lodge concerning the possible violations outlined in this report.

## CONCLUSIONS AND RECOMMENDATIONS

Due to the large geographical area involved and the number of persons implicated in the numerous violations this case is being closed and forwarded to the National Office for evaluation.

It is also noted that several persons contacted in this investigation suggested the United States Attorney in Pittsburgh, Pennsylvania, appears reluctant to pursue prosecution of labor violations (Exhibit 4B).

In view of the size and scope of a full investigation with the allegations, it is requested that the Office of Inspector General - OOCR Coordinator review the file and make a determination on whether to commit resources to a National Office Project.

Office of Organized Crime & Racketeering
PNB Plaza Building, Suite 900
Fifth & Market Streets
Philadelphia, PA 19106
Reply to the Attention of: RER

July 3, 1980

MEMORANDUM FOR: RONALD GOLDSTOCK
Acting Inspector General

FROM: DARWIN L. STEELMAN
Special Agent in Charge
Office of Organized Crime & Racketeering
Philadelphia, Pennsylvania

IN RE: Boilermakers Lodge
~~Pittsburgh, Pennsylvania~~
(Case #31-7244-0001)

The attached relates to several allegations of wrongdoing by Boilermaker Lodges in general and Boilermaker Lodge of Pittsburgh, Pennsylvania in particular.

Since October 1979, two informants have contacted the Philadelphia Strike Force regarding Lodge . The first contact was made in October 1979 by an individual who wishes his identity to remain confidential. The informant outlined, in detail, a scheme to purchase a union membership in the Boilermakers.

In January 1980, a second informant, a boilermaker contacted this office and related information regarding union membership buying. The second informant also alleged instances of possible extortion and Taft-Hartley violations by Shop Stewards, Business Agents, and Officers of Lodge Both informants named Business Manager of Boilermakers Lodge , as the individual responsible for the illegal activities.

Information supplied by the Bureau of Alcohol, Tobacco & Firearms and the Pennsylvania Crime Commission indicates is an associate of numerous organized crime figures in Pittsburgh, Pennsylvania. was a partner in a restaurant in Indiana, Pennsylvania, with presently incarcerated in Danbury, Connecticut. on a federal gambling conviction. is also an associate of the of Pittsburgh, Pennsylvania.

The Philadelphia Office of Organized Crime and Racketeering is closing this file with the concurrence of the Philadelphia Strike Force Attorney in Charge.

[illegible]

June 24, 1980

MEMORANDUM FOR: DARWIN L. STEELMAN
Special Agent-in-Charge
OOCR Philadelphia

FROM: STU EDER
Coordinator, Organized Crime and
Racketeering

SUBJECT: , Business Agent, International
Brotherhood of Boilermakers, Local
Pittsburgh, Pennsylvania

Find attached an FBI report concerning alleged conversion of proceeds from the sale of union raffle tickets by Considering information developed by your office relative to alleged sale of union books, this matter is being referred to you for appropriate action.

Attachment

cc: OOCR reading file
OOCR Philadelphia Gen. Corres. file
/Case file – [illegible]
OOCR:EDER:eby 6/24/80

EDER GOLDSTOCK
OOCR AIG

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

DM:GAT:mlw
156-017-64

[illegible] 9 1980

Mr. Stuart Eder
Office of Inspector General
United States Department of Labor
Room S1303
200 Constitution Avenue, N. W.
Washington, D. C. 20210

Re: Boilermakers Local
Pittsburgh, Pa.

Dear Mr. Eder:

I have enclosed for your information an FBI memorandum concerning and the alleged conversion of proceed from the sale of union raffle tickets. You may recall that Roger Riedley, Philadelphia was looking into the sale of union books by

Sincerely,

DAVID MARGOLIS
Chief, Organized Crime
and Racketeering Section
Criminal Division

By: Gerald A. Toner
GERALD A. TONER
Attorney, Labor Unit

Enclosure

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

*In Reply, Please Refer to File No.*

Pittsburgh, Pennsylvania

May 20, 1980

BUSINESS AGENT,
INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,
LOCAL PITTSBURGH, PENNSYLVANIA;
LABOR MANAGEMENT REPORTING AND DISCLOSURE
ACT OF 1959

French E. Gover appeared at the Wheeling, West Virginia (WV), Resident Agency and stated, that subject is involved in the sale of fifty-fifty raffle tickets to members of Local on an involuntary basis. Gover advised that each man, whether a member, traveler, or permit man within the union is required to buy five chances on a weekly basis on the fifty-fifty monthly drawing. Gover stated stewards on the various jobs in the district distribute the tickets to "runners" on the various job sites, and everyone is required to buy a ticket or their job is placed in jeopardy.

The fifty-fifty ticket is supposedly for the boiler makers' sick fund for the benefit of the sick members.

Gover concluded that he personally lost his job because he refused to purchase the fifty-fifty tickets. It is believed that subject is using the proceeds of the fifty-fifty monthly drawing for personal gain.

On May 14, 1980, Assistant U.S. Attorney (AUSA) Frederick W. Thieman, advised that based upon results of additional investigation in this matter, it should be determi the exact purpose of the fifty-fifty drawing, he will conside prosecution of Gualtiera for embezzlement of union assets under Title 18, U.S. Code, Section 501 (c).

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

## ADVICE OF SCHEDULED INVESTIGATION

TO: Joel M. Friedman
Attorney in Charge
Philadelphia Strike Force

ASI DATE March 11, 1980

FILE NO. D-7244-0001

Category "A"

An investigation regarding the subject identified below will be conducted and a report/notification will be made at the earliest practicable date. If you have or should receive additional information concerning this matter, please forward it to this office.

| | | |
|---|---|---|
| Subject: | Source: | |
| BOILERMAKERS IU | Confidential Informant | |
| Subject's Address: | Date | Date (Receipt of Request) |
| Pittsburgh, PA | 3/11/80 | 10/03/79 |

Basis For Investigation:

Informant making complaint wishes to remain anonymous. Membership in Locals or International may be purchased. Informant wishes to become an operative of the DOL/OIG and make purchase of said union membership.

Special Agent in Charge

Distribution:
OC Coordinator w/ index card(s)

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**PART I COMPLAINT/CASE ACTION DATA**

A) **FILE NUMBER:** (OFC / COMPLAINTS F.Y. / COMPLAINT NO. / CASE F.Y. / CASE NO.) 3 1 — 0 — 0 0 1 R - 0 - 0 1
2 3 4 5 6 7 8 9 10 11 12 13 14 15

B) **COMPLAINT RECEIPT DATA:** MONTH 1 0 DAY 0 3 YEAR 7 9
16 17 18 19 20 21

C) **SOURCE DATA:** 0 1
22 23

D) **INVESTIGATIONS (Program) TYPE:** 0 C
24 25

E) **SUBJECT AGENCY INVOLVED:** E Z 0
26 27 28

F) **ENTITY CODE (Prime Sponsor)** (if applicable)
29 30 31 32 33

G) **STATE OF ALLEGED ACTIVITY:** P A
34 35

H) **COMPLAINT/CASE SUBJECT NAME:** (if indiv., last name first) X B O I L E R M A K E R S L U
36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52
55 56 57 58 59

I) **INITIAL ACTION TYPE:** 1
62

J) **INITIAL ACTION DATE:** MONTH 0 2 DAY 1 4 YEAR 8 0
63 64 65 66 67 68

Prepared by:
Roger E. Riedley, Special
Subj. review
Darwin L. Steelman, SAC
Subj. address
Pittsburgh, PA

Summary:

Informant making complaint wishes to remain anonymous. Membership in locals or international may be purchased. Informant wishes to become an operative of the DOL/OIG and make purchase of said union membership.

The **Chairman**. At any rate, the Labor Department referred this case to the FBI on November 28, 1980. Did the FBI ever contact you regarding these charges?

Mr. **Gary Boring**. No.

The **Chairman**. In other words, they never contacted you after the case was referred?

Mr. **Gary Boring**. No. I knew the case was referred. I confirmed that the case had gone to the FBI, and that was the last contact I had.

The **Chairman**. We will put in the record at this point Boring Exhibit No. 4, without objection, so that we have all four exhibits in the record at this point without objection. That happens to be the referral to the FBI.

[Boring Exhibit No. 4 follows:]

[illegible]
PNB Plaza Building, Suite 900
Fifth & Market Streets
Philadelphia, PA 19106
[illegible]

November 28, 1980

BORING #4

MEMORANDUM FOR: R. DAVID [illegible]
Special Agent
Federal Bureau of Investigations
P.O. Box 1315
Pittsburgh, PA 15230

FROM: ROGER E. [illegible]
Special Agent
U.S. Department of Labor
Office of Inspector General, OOCR
PNB Plaza Building, Suite 900
Fifth & Market Streets
Philadelphia, PA 19106

THRU: DARWIN L. STEELMAN
Special Agent in Charge

IN RE: Boilermakers Lodge
, Pennsylvania

The attached relates to several allegations of wrongdoing by Boilermakers lodges in general and Boilermakers Lodge , of . Pennsylvania in particular.

Since October 1979, two informants have contacted the Philadelphia Strike Force regarding Lodge The first contact was made in October 1979 by an individual who wishes his identity to remain confidential. The informant outlined, in detail, a scheme to purchase a union membership in the Boilermakers.

In January 1980, a second informant, a boilermaker contacted this office and related information regarding union membership buying. The second informant also alleged instances of possible extortion and Taft-Hartley violations by Shop Stewards, Business Agents, and Officers of Lodge Both informants named , Business Manager of Boilermakers Lodge , as the individual responsible for the illegal activities.

Information supplied by the Bureau of Alcohol, Tobacco & Firearms and the Pennsylvania Crime Commission indicates is an associate ~~of~~ numerous organized crime figures in Pittsburgh, Pennsylvania. was a partner is a [illegible] in Indiana, Pennsylvania, with John Bazzano, presently incarcerated in Danbury, Connecticut, on a federal gambling conviction. Gualtieri is also an associate of the [illegible] Family of Pittsburgh, Pennsylvania. Bazzano, who is to be released from custody in the near future, is said to be a son-in-law of one of the [illegible].

Attachment

The CHAIRMAN. Mr. Boring, you stated in your testimony here this morning that members of the Philadelphia strike force "would rather cut off their arm" than give the case to the FBI "because they knew it would die in the files." Who told you that?

Mr. GARY BORING. Mr. Roger Riedley, Mel Gudknecht, and Mr. Steelman from the organized crime strike force.

The CHAIRMAN. I take it that Mr. Steelman was Roger Riedley's superior?

Mr. GARY BORING. Yes, sir, he was.

The CHAIRMAN. Did he confirm that to you on a later date?

Mr. GARY BORING. Yes, he did.

The CHAIRMAN. Did you ever contact the U.S. attorney's office in Pittsburgh regarding this subject?

Mr. GARY BORING. Yes.

The CHAIRMAN. Did you tell the U.S. attorney's office essentially the same things you told the Department of Labor investigators on the strike force?

Mr. GARY BORING. Senator, we started to explain. We had a hard time getting an appointment with the U.S. attorney. When finally that took place, we went to his office—my brother, Wayne, and I—and we were prepared to present him with our problems. At that time, he became, I will say, hostile and threw the papers back. He said, "I have the complete file here." At that time, he shoved three, four or five papers back across the desk. I could see at that point that he was not aware. Something had happened somewhere. He was not aware of the material on our case, or he was doing his best to give us a fast shuffle.

The CHAIRMAN. Mr. Boring, what was the name of the U.S. attorney at that time?

Mr. GARY BORING. Robert Cindrich.

The CHAIRMAN. On November 2, 1979, you telephoned an official of the Nuclear Regulatory Commission with charges that boilermakers union cards were being sold to unqualified welders, and that welding tests were being faked to cover up for these welders' lack of ability. The NRC investigated your charges and issued a report on April 9, 1980, that found no evidence to support your charges. The report stated that you failed to provide names of persons who had allegedly bought union cards illegally or faked welding tests. Since you provided a list of names of card purchasers to the Labor Department investigators on the Philadelphia strike force, why did you not do the same for the Nuclear Regulatory Commission?

Mr. GARY BORING. I was asked not to by Mr. Riedley, so that there would not be an overlapping investigation.

The CHAIRMAN. In other words, you are saying that Mr. Riedley of the strike force told you not to give any names to any other investigative agency?

Mr. GARY BORING. Yes, sir.

The CHAIRMAN. Do you think the NRC could do a very good job of investigating your charges without talking to any of the principals that you had named in your investigation?

Mr. GARY BORING. No, sir, I do not.

The CHAIRMAN. The NRC report stated that it would be difficult to compromise the welding test because of the presence of the welding supervisor who works for the company and not for the union. Do you have any direct knowledge of welding tests being compromised or faked?

Mr. GARY BORING. I, myself, on one occasion, took between 13 and 15 welding tests at the Conemaugh Generating Station, in Huff, Pa. I was specifically directed to take these tests by, I believe, what I will say is the director, the job foreman, and the steward.

The CHAIRMAN. The welding supervisor, in other words?

Mr. GARY BORING. Yes, sir.

The CHAIRMAN. Over what period of time did you take those tests?

Mr. GARY BORING. I believe this all took place in one night.

The CHAIRMAN. In other words, there was no way you needed to qualify yourself by taking that many tests in one night?

Mr. GARY BORING. Senator, my qualifications, if I say I go on a job, I test for myself. At that point, my credentials are proven, either one way or the other. Either you pass the test or you fail the test. In that case, these tests were given to other individuals.

The CHAIRMAN. So you are quite sure then that you took tests for other people who were qualified then to work on the job as a result of your qualifications, not their own?

Mr. GARY BORING. Yes, sir.

The CHAIRMAN. This one occasion was at Conemaugh?

Mr. GARY BORING. Yes, sir, it was.

The CHAIRMAN. And you took 12 or 13 tests. Was that in December 1977 or thereabouts?

Mr. GARY BORING. Around that time, yes, Senator.

The CHAIRMAN. Mr. Boring, your critics say that you have conducted a harrassment campaign against local 154 and its leadership. Before I get into this question, let me put in Boring Exhibit No. 5, which is the report of the Nuclear Regulatory Commission.

[Boring Exhibit No. 5 follows:]

PDR

Boring #5

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

APR 0 9 1980

Docket Nos. 50-289
50-320 Q

Metropolitan Edison Company
ATTN: Mr. R. C. Arnold
Senior Vice President
100 Interpace Parkway
Parsippany, New Jersey 07054

Gentlemen:

Subject: Combined Investigation 50-289/79-175 and 50-320/79-175

This refers to the investigation conducted by Mr. G. Walton of this office on January 8-9, 1980, at Three Mile Island, Units 1 and 2, Middletown, Pennsylvania of activities authorized by NRC License Nos. DPR-50 and DPR-73 and to the discussions of our findings held by Mr. Walton with Mr. Wright and other members of your staff at the conclusion of the investigation.

In addition to Three Mile Island Units 1 and 2, this investigation included four other nuclear facilities. The attached report includes the investigations performed at all six nuclear facilities.

Areas examined at your facility are described in the Office of Inspection and Enforcement Investigation Report which is enclosed with this letter. Within these areas, the investigation consisted of selective examinations of procedures and representative records, interviews with personnel, and observations by the inspector.

Within the scope of this investigation, no items of noncompliance were observed.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosed investigation report will be placed in the NRC's Public Document Room. If this report contains any information that you (or your contractor) believe to be proprietary, it is necessary that you make a written application within 20 days to this office to withhold such information from public disclosure. Any such application must be accompanied by an affidavit executed by the owner of the information, which identifies the document or part sought to be withheld, and which contains a statement of reasons which addresses with specificity the items which will be considered by the Commission as listed in subpraragraph (b) (4) of Section 2.790. The information sought to be withheld shall be incorporated as far as possible into a separate part of the affidavit. If we do not hear from you in this regard within the specified period, the report will be placed in the Public Document Room.

No reply to this letter is required; however, should you have any questions concerning this investigation, we will be pleased to discuss them with you.

Sincerely,

Robert T. Carlson

Robert T. Carlson, Chief
Reactor Construction and Engineering
Support Branch

Enclosure:
Office of Inspection and Enforcement
Investigation Report Nos. 50-289/79-175
and 50-320/79-175

cc w/encl:
J. G. Herbein, Vice President Nuclear Operations
R. J. Toole, Manager, TMI-1
W. E. Potts, Radiological Controls Manager, TMI-1
J. J. Colitz, Plant Engineering Manager, TMI-1
R. F. Wilson, Director, TMI-2
J. J. Barton, Manager Site Operations, TMI-2
R. W. Heward, Radiological Controls Manager, TMI-2
B. Elam, Plant Engineering Manager, TMI-2
L. W. Harding, Supervisor of Licensing
E. G. Wallace, Licensing Manager
I. R. Finfrock, Jr.
R. W. Conrad
J. B. Lieberman, Esquire
G. F. Trowbridge, Esquire
Ms. Mary V. Southard, Chairperson, Citizens for a Safe Environment (Without Report)

U. S. NUCLEAR REGULATORY COMMISSION
OFFICE OF INSPECTION AND ENFORCEMENT

REGION I

Report No. 79-175

Docket No. 50-289, 50-320, 50-334, 50-412, 50-352, 50-353

License No. CPPR-105, DPR-73, CPPR-106, DPR-107, DPR-66, DPR-50 Priority -- Category A-C

Licensee: Philadelphia Electric Company

Duquesne Light Company

Metropolitan Edison Company

Facility Name: Beaver Valley 1, 2, Three Mile Island 1, 2, Limerick 1, 2

Investigation At: Shippingport, Pa., Middletown, Pa., Limerick, Pa.

Investigation Conducted: Dec. 10-13, 1979, Jan. 8-9, 1980, Jan. 14-16, 1980

Investigators: G. Walton 4/8/80
G. Walton, Reactor Inspector date

Charles O. Gallina 4/8/80
C. Gallina, Investigation Specialist date

date

Approved by: L. Tripp 4/8/80
L. Tripp, Section Chief, Engineering Support date
Section #1, RC&ES Branch

Investigation Summary:

Investigation on Dec. 10-13, 1979 and Jan. 8-9 and Jan. 14-16, 1980 (Report 79-175)

Area Investigated: Unannounced investigation at six nuclear facilities of four allegations concerning welder qualifications. The investigation involved 60 investigative hours onsite by one NRC regional based inspector. An inspector and an investigator also interviewed the allegers in their home.

Results: None of the allegations investigated were found to be substantiated and no apparent items of noncompliance with regulatory requirements were identified.

Region I Form 167
(August 1979)

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- D. Specific Allegations
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# I. BACKGROUND

## A. Reason for Investigation

On November 15, 1979, Region I, Office of Inspection and Enforcement initiated the investigation, under the provisions of 10 CFR Part 50.70, of allegations made by Gary Boring, a construction worker. The allegations were made by Gary Boring on November 2, 1979 by telephoning NRC Commissioner Mr. Victor Gilinsky's office and speaking to an aide.

Interviews were conducted with Gary and Wayne Boring on November 20, 1979, at Gary Boring's residence by NRC representatives, Dr. C. Gallina and G. Walton.

The thrust of the allegations regard the practice of boilermaker unions obtaining craft membership. They state that membership in unions occurs without the individual going thru the normal union requirements. Normal union requirements are 3 years apprenticeship. This is occurring through a practice they refer to as "book buying", an alleged payoff to union officials by nonunion individuals desiring union admittance. They believe a person without any experience can buy a "book" and go to work at a nuclear or fossil fueled facility.

After the interview, a letter (attachment 1) dated December 12, 1979 was sent to Gary Boring that described the allegations the way the NRC investigators understood them. It requested a review of the contents to assure our understanding was correct. It also requested any additional information they would like to submit.

A response, dated December 29, 1979 was received that stated our letter was correct. Additional information was also provided (attachment 2).

The investigation was conducted at six nuclear facilities on the dates shown below.

- Beaver Valley, Units 1-2 - December 10-13, 1979
- Three Mile Island, Units 1, 2 - January 8-9, 1980
- Limerick Generating Station, Units 1, 2 - January 14-16, 1980

# II. SUMMARY OF FINDINGS

## A. Allegations and Investigation Findings

The NRC representative investigated four allegations at six nuclear facilities. The allegations and NRC findings on each are as follows:

1. Allegation No. 1

It was alleged that crafts bought union "books" and were sent to Three Mile Island Unit 2 with instructions to state they were certified welders. During the actual welding test given at TMI, if welders could not pass the test given in the vertical and overhead positions they would take the test in a flat position. Gary Boring stated that several of the individuals who bought "books" were never qualified welders and could not pass a valid welding test. Gary Boring could not name any specific individuals who were not qualified.

The NRC investigation found no evidence that welders were not properly qualified at Three Mile Island.

2. Allegation No. 2

Gary Boring stated that he was assigned during the construction at TMI Unit 2, to weld on the inside, southwest end of the condenser. Someone had already welded from the outside and before Gary Boring commenced welding he wanted to remove some obvious slag already present in the weld. When he brought this to the attention of the foreman, he was told to go ahead and weld, regardless of the slag present, which he did.

The NRC investigation found the condenser is a non-safety system and not included in the quality scope of work at Three Mile Island.

3. Allegation No. 3

Gary Boring stated that while he was working at a fossil-fueled plant for Schneider Inc., he took welding tests for eight other welders. As a result, they were qualified by Schneider Inc. without ever taking a test. Further, that Schneider Inc. is currently working on nuclear facilities at Beaver Valley, Units 1 and 2, and some of these individuals might be working there for Schneider Inc. It was also alleged that welders at Beaver Valley are being supplied from Union Local 636, Titusville, Pennsylvania, which sells union "books" and as a result may be supplying unqualified welders.

The names of the eight individuals that Gary Boring took the test for were not provided nor the names of any individual who bought a union "book".

The NRC investigation found no evidence that welders were not properly qualified at Beaver Valley Units 1 and 2.

4. Allegation No. 4

The Borings believe union "books" are being sold out of Local 329, and as a result, unqualified welders and fitters may be working at nuclear facilities such as Limerick and Hope Creek.

The NRC investigation was conducted at the Limerick Generating Station and found no evidence that welders or fitters were not properly qualified.

## B. Conclusions

The determination of whether "book buying" and other allegations of fraud described in Gary Boring's letter had occurred was not investigated by this office. The NRC understands from discussions with Gary Boring that he is pursuing these matters with the Department of Justice. By request the NRC has forwarded to the Justice Department a copy of Gary Boring's letters.

The NRC does not rely on the unions to provide crafts who are qualified. We require the owner and contractor to assure through training and testing that crafts are qualified to perform these assigned tasks.

The allegations that unqualified crafts are working at nuclear facilities were not substantiated by the investigation.

# III. DETAILS

## A. Introduction

This investigation was initiated as a result of a telephone conversation between NRC Commissioner Victor Gilinsky's office and Mr. Gary Boring. Allegations were made that craft personnel were working at nuclear facilities who were not qualified.

The NRC Region I contacted the individual by telephone on November 15, 1979, and scheduled an interview to obtain additional information regarding the allegations. Gary and Wayne Boring were interviewed at Gary Boring's residence on November 20, 1979 by Dr. C. Gallina and G. Walton. After the interview, a letter, dated December 12, 1979 was sent to Gary Boring that described the concerns as the NRC investigators understood them. (Letter attached)

A response dated December 29, 1979 was received stating our information was correct. Additional information was also provided that stated several local unions and individuals were selling "union books" and allowing unqualified crafts to work at nuclear facilities. (Letter attached)

## B. Scope of Investigation

This investigation was limited to allegations made against nuclear facilities except for conditions where welders qualified at fossil-fueled facilities might transfer these qualifications to a nuclear facility. In all cases the investigations were conducted on-site at nuclear facilities.

The onsite investigation commenced at Beaver Valley (BV) on December 10, 1979 followed by onsite investigations at Three Mile Island (TMI) on January 8, 1979 and at Limerick on January 14, 1980.

The investigation consisted of:

- Discussions and interviews with Quality Assurance personnel, welding inspectors, welding supervisors, and welding foreman
- Review of documentation applicable to welder qualifications
- Review of examination records of completed welds, including radiography
- Visual examinations of completed welds.

The investigator evaluated the findings against the following documents.

- ASME Boiler and Pressure Vessel Code Section IX, Welder Qualification
- American National Standards Committee ANSI N45.2.6, Qualification of Nuclear Power Plant Inspection, Examination, and Testing Personnel
- 10 CFR Part 50, Appendix B, Criterion II, IX
- U.S. Nuclear Regulatory Commission, Regulatory Guide 1.58.

## Persons Contacted

1. Duquesne Light Company - Beaver Valley

    R. Coupland, Director of Quality Control
    R. Washabaugh, Manager, Quality Assurance Department
    F. Green, Quality Control Engineer
    R. Ricard, Welding Supervisor
    P. Dickson, Welding Foreman
    R. Raymond, Welding Supervisor

2. Metropolitan Edison Company - Three Mile Island

    J. Wright, Quality Control Manager
    T. Corry, Quality Control Engineer

3. Philadelphia Electric Company - Limerick

    J. Corcoran, Field Quality Assurance
    D. DiPaolo, Quality Assurance Engineer

The inspector also interviewed other licensee and contractor personnel during the investigation.

D. Specific Allegations

1. Allegation No. 1

a. Allegation

It was alleged that crafts bought union "books" and were sent to Three Mile Island with instructions to state they were certified welders. During the actual welding test given at TMI, if welders could not pass the test given in the vertical and overhead positions they would take the test in a flat position. Gary Boring stated that several of the individuals who bought "books" were never qualified welders and could not pass a valid welding test. He could not name any specific individuals who were not qualified.

b. NRC Investigation

The ASME, B&PV, Code, Section IX recognizes different positions for qualifying welders. A welder who fails an overhead qualification test may be tested in other positions, such as flat. His qualification test certification must describe the position or positions he is qualified in and he must be limited to that while welding.

It was requested, from the allegers, but not provided, the names of these welders who changed the welding positions during these tests.

The investigator audited the welder certifications for all boilermaker welders who took the welding test in the same time frame that the alleger took the test on-site at TMI. The investigator determined that Gary Boring qualified on-site on September 13, 1972 and June 28-29, and July 5, 1973.

During the periods from August 30, 1972 until September 27, 1972 and June 11, 1973 until August 30, 1973, 59 welding tests were taken and acceptable. Of these 59, 22 of them were taken in the overhead position, two of the tests being taken by the alleger. One welder qualified in the flat position, and the balance of the tests were taken in other positions.

Fifty additional welder test certifications made during the construction phase of TMI 1, 2 were audited by the investigator and no discrepancies were found.

This allegation could not be substantiated.

2. Allegation No. 2

a. Allegation

During the construction at TMI, Gary Boring stated that he was assigned to weld on the inside, southwest end of the condenser. Someone had already welded from the outside and before he commenced welding, he wanted to remove some obvious slag already present in the weld. When he brought this to the attention of the foreman, he was told to go ahead and weld, regardless of the slag present, which he did.

b. NRC Investigation

The NRC investigator found that the condenser is not a safety related system. It was not required to be included in the quality scope of work at TMI. No records on these type systems were required and no nondestructive examinations, such as radiography, were required. Since this is not a safety related system, the investigator did not pursue this allegation.

This allegation could not be substantiated.

3. Allegation No. 3

a. Allegation

While Gary Boring was working at a fossil-fueled plant for Schneider Inc., he stated that he took welding test for eight other welders. As a result, they were qualified by Schneider Inc. without ever taking a test. Further, that Schneider Inc. is currently working on nuclear facilities at Beaver Valley, Units 1 and 2, and some of these individuals might be working there for Schneider Inc. Also at Beaver Valley he stated that welders are being supplied from Union Local 636, Titusville, Pennsylvania, which sells union "books" and as a result may be supplying unqualified welders.

b. NRC Investigation

Although the allegation that one person took a test for eight others occurred at a fossil-fueled facility which is outside the jurisdictional authority of the NRC, it was investigated because welder certifications within a company can be transferred from a fossil-fueled facility to a nuclear facility. In this case Schneider Inc., the contractor involved in the allegation, is the piping contractor at Beaver Valley, Unit 2.

The names of the individuals that the test were taken for could not be supplied, nor could any individual be named who had bought a "book". The allegers furnished the investigators with the name of a welder who works on site at Beaver Valley 2 as a source of information to support the allegers' statements. The investigators attempted to contact this individual by telephone on numerous occasions without success. The NRC office also sent the individual a certified letter requesting him to contact the investigator. No contacts were made until March 19, 1980.

This individual was interviewed in Region I offices on March 31, 1980. No new information to support this allegation was provided at that time. Other allegations not related to matters of this investigation were made during that interview and will be the subject of separate investigation(s).

Having no specific information regarding individual welder qualifications, the investigator conducted extensive reviews of all welders activities at Beaver Valley Units 1 and 2. The following concerns were investigated.

1. Can welder certifications be transferred?

The governing code, ASME, B&PV Code, Section IX does allow welder qualifications to be transferred if the individual continues to weld for the same organization. For example, Schneider Inc. could transfer welder qualifications from the fossil-fueled plant to a nuclear facility.

The practice at Beaver Valley is to administer a welding test to all welders who report on site as welders. If the individual fails he may be given reinstructions and retested immediately. If he fails the retest, he must wait 30 days before he can retest again. The investigator found that no welder qualifications were transferred by Schneider from another location to BV. All were required to retest.

2. Are weld test stringent enough?

The investigator reviewed the test results of 604 welders who had taken welding tests on site. The 604 welders had taken a total of 1428 weld tests, 399 of the tests were failed for a failure rate of approximately 28 percent. This included crafts in the ironworkers, pipefitters, carpenters, sheetmetal, electricians and boilermakers unions.

This failure rate could be attributed to unqualified welders attempting to pass the test. Regardless of cause of test failure, it indicated to the NRC that stringent tests are being given and welders who cannot satisfactorily weld are disqualified.

Frank Gower - VRC -

3. **Are the people who give the test controlled by the unions or union members?**

NJ - [illegible] south to 60's [illegible]

Mike [illegible] Philipsburg

The investigator interviewed the people who administer the weld test. This included 2 welding supervisors, a welding foreman, and a Duquesne Light Quality Control Engineer. The welding foreman is a union employee with job responsibilities for welder orientation, providing test booth and weld samples, welding machine assignment, weld rod issue, and instruction to welder on type of test he is to take. He does not control the decision of whether a welder passes or fails a test. This is controlled by the welding supervisor who is not a union member. In addition, the Duquesne Light Q.C. engineer audits 100 percent of the examinations. He is not a union member.

Based on the above the investigator is satisfied that the weld tests are not controlled by the union.

4/23

This allegation was not substantiated.

Gary - If I know the foreman. I can take the test.

4. **Allegation No. 4**

a. **Allegation**

The Borings believe union "books" are being sold out of Local 329, and as a result unqualified welders and fitters may be working at nuclear facilities such as Limerick and Hope Creek.

b. **NRC Investigation**

The investigator was not supplied with any names of individuals who are not qualified and working at either of the sites mentioned above. Therefore, the investigator performed a detailed audit of welding activities at the Limerick Generating Station. The following areas were audited;

Suggest - US Navy process - rigid conditions - supt. designated not with union - inspection referee.

- Interviews with the welding supervisors who conduct the weld tests.
- Evaluation of the welders' reject rate. The reject rate of welders is a higher percentage than BV although comparable to each other.
- Audit of welder qualification. This was accomplished by reviewing weld history records and tracing the welders to assure initial and continuing welder qualification.

[illegible] -

Supt. plays [illegible] [illegible] ways.

try Salem - Jersey BPU

- Audit of numerous weld history records to ascertain weld quality
- Visual examinations of numerous welds to ascertain weld quality
- Review of radiographic film to ascertain weld quality
- Review of production weld failure rates based on radiography. The reject rate of welds deposited is less than 1 percent.

The NRC investigation found no information or evidence that unqualified welders are working on site.

This allegation was not substantiated.

## E. Management Meetings

Management meetings were conducted at the Beaver Valley site on December 13, 1979, Three Mile Island site on January 9, 1980 and at Limerick Generating Station on January 16, 1980. The investigator discussed the reason and scope of the investigation.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

December 12, 1979

Mr. Gary Boring
429 Water Street
Indiana, Pennsylvania

Dear Sir:

This is to confirm the meeting held at your residence on November 20, 1979, between you, your brother, Wayne, and Dr. C. Gallina and Mr. Glenn Walton of this office. As a result of that meeting, our understanding of the information provided by you and your brother which potentially relates to areas of nuclear safety is as follows.

1. Welder qualification practices during the construction phase at Three Mile Island, Unit 2 (TMI-2)

   From your comments we understand that crafts bought union "Books" and were sent to TMI-2 with instructions to state they were certified welders. Then during the actual welding test given at TMI-2, if the welders could not pass the test in the vertical or overhead positions, they would take the test in a flat position. You stated that several of these individuals who bought "Books" were never qualified welders and could not pass a valid welding test.

2. Welding Condenser at TMI-2

   During the construction at TMI-2, you stated you were assigned to weld on the inside, southwest end of the condenser. Someone had already welded from the outside and before you commenced welding you wanted to remove some obvious slag already present in the weld. When you brought this to the attention of the foreman, you were told to go ahead and weld, regardless of the slag present, which you did.

3. Welder Qualification

   While you were working at a fossil-fueled plant (Conemaugh), for Schneider Inc., you stated that you took welding tests for eight other welders. As a result, they were qualified by Schneider Inc. without ever taking a test. Further, that Schneider Inc. is currently working on nuclear facilities at Beaver Valley, Units 1 and 2, and some of these individuals might be working there for Schneider Inc. They could weld for Schneider Inc. without requalifying because welder qualifications are transferrable when the individual works for the same organization. Also at Shippingport (Beaver Valley ?), you state that welders are being supplied from Union Local 636, Titusville, Pennsylvania, which sells union "Books" and as a result may be supplying unqualified welders.

ATTACHMENT (1)

4. Selling Union Books

You believe union "Books" are being sold out of Local 329, and as a result unqualified welders and fitters may be working at nuclear facilities such as Limerick and Hope Creek.

We would appreciate your review of the above areas to assure that our understanding is correct. If there is additional information you may have or wish to provide, please let us know.

As was explained to you during the November 20, 1979 meeting, we plan to thoroughly investigate all matters within NRC regulatory jurisdiction. We do understand that you have provided similar information as above to other Federal and State agencies.

Please advise this office in writing within 20 days if our understanding of the information provided to us is correct.

Sincerely,

James M. Allan

James M. Allan
Deputy Director

bcc:
R. Carlson
L. Tripp
L. Narrow
J. Mattia
R. Smith
C. Gallina
G. Walton ✓
D. Beckman
W. Bateman

enclosed is 11 pages hand
written letter

Dec. 24. 1979

United States
Nuclear Regulatory Commission
Region 1.
631 Park Ave.
King of Prussia, Pennsylvania 15406
Deputy Director
Mr. James M. Allen

Dear Sir

I am writing in regards to your Dec. 12, 1979 letter, and the first 2 items are correct.

Number 3 should read starting on line 8 at this mark(^) on.

There are men who at, the present time are working at Shippingport (Beaver Valley?), I stated that there were men who bought union books out of Local 636 and other locals in Pennsylvania, New Jersey Montreal Canada, Charleston South Carolina Ohio and New York. These books are a result of falsifying records and documents to lead you and others to believe that all posess the qualifications needed to become Boilermakers or Journeymen Mechanics and Certified Welders. As a result of this they are in this and other areas supplying

II-

unqualified welders & Mechanics:

Paragraph 4. Should read that I know that Local 801 in New Jersey, Local 50 in New Jersey, Local 329 in New Jersey have been selling union books to anyone sent down to buy one.

Local 50 still sells books even though it is I believe a defunct local and has not operated as one for quite some time. Local 50's business agent is Dominic Mayese he is or was untill a short time ago the Mayor of the town in which he resides. Im sure if you secure the books you'll find that there has been a lot of books sold there. Check one in particular Rodney Kolsar he bought a book out of Local 50 and later transferred to Local 154 in pittsburgh he is quite capable of doing the work there were others who were not and had no background in Boiler makers work what so ever. Some of his books went as far as Arizona.

There are people who bought books in 329 and 801 who were never in New Jersey and others who left this area from jobs they were already working on in bogus positions. They went down one day came back and possessed

III

cards saying they were bonafide Boilermaker These men were told they had to have some kind of books or they weren't going to be sent of to work there were others who couldn't sign up at the Local hall here because they didn't have books at all regardless of Qualification or not. The Business agent Mr. Fred Gualitieri would not let them one day, however if they came back next day with a book they were and are being sent out. The officers and agents of Local 154 have and I believe if questioned in front of a proper forum it will be found that through there actions and that of the International Union and other Local Business agents they have successfully hampered, interfered with, hindered the Building and Construction of Both fossil-fueled plants and Nuclear facilities across the United States both by falsifying test results, paper work on union books, taken money over and above the rates normally charged for these books and forcing different people to pay into a building fund. I've charged with due cause that the International-Local 154 and other locals are involved in interstate Racketeering

IV

h the conant and total aproval of all
panies doing buisness with them.
this manner they are in collusion to
prices), regulate ~~it~~ the flow of labor
e by committing the biggest consumer
in American History. The things
are going on are a threat to the
ernal Security of this country and every
uclear facility going. If your office
doesn't take intelegit control of the situations
that now exists then I feel and fear for
the Nuclear Power Industry.

I am in favor of Nuclear Power
because with out it my daughter might
not be here today. She had Cancer and
recived radiation for therapy.

But that was controlled. I want
to take hold of the Controlls otherwise
it will result in sholy patchy and
h which could be fatal to us all.

There are people that have bought
bo 's in Montreal Canada and never left
th states and there are some who drove
up n day and came back the next day with
b s with out Boilermaker or welding
exp iance.

Local 687 Sold book's to anyone that Fred Gualitieri OK'd. I myself made a call to Kenny Horn the Business agent of that 687 local and tried to make a buy. I was told it was OK with him if Fred would OK it because at the time Fred was taking care of the 687 local men who were up there to work And I will testify to that and the rest of the conversation in Court and I'll permitt you to give me any test you want to determin the accuracy of my statements. I called Mr. Horn at his home and had a talk with him: My phone bill will bear this out that the call was made a few years befor 3 mile island accident. One other man was involved Mr. Bill Smith he lives near in Indiana there was another Mr. Art Bower from Saxon Burgh Pa.

The main thing you to look at is you have people out there doing work that has been for some time bummed up and covered up and for your sake and mine and that of all our Children. Because if one major accident occurs and can't be stoped. Then Sir it will be a sad day for America and Americans. If there isn't a full scale investigation into all of of our charges and aligations their Sir. I've done my part and the load is off my mind and then you live with it I'll go wash cars for a living.

I'm going to say my piece I would like to tell it to a meeting of the Nuclear Regulatory Commission where I could be questioned on the material I am presenting at the time, I believe that there are others who would like to do the same

I want this meeting just one time then you and yours can take the time to digest the information and give me a written reply as to what you intend to do. I would like a verbadom transcript taken at the time and I want to be able to record the session for my own records.

I've spoken to Senator Nunns aid at a meeting in Washington requesting the Organized Crime Sub. Committee to investigate they said they don't and can not spend the time or money invistigating one little local.

The Atom Bomb was one little ~~[illegible]~~ chunk of steel look what it did its whats inside.

VII

The International knows what is going on and turns its head we've told them and they get copies of all the charges we file. They tried to buy our silence - ~~they~~ the U.S. Attornies office has been informed of this. Then we told them no sale at a great personal loss to us.

Your Commission has the power to look at all this and if you need the justice department then call on them but for God's ~~sake~~ sake do something nation wide, Crack down and Crack down hard otherwise we are all courting with disaster. All for the sake of politicing and a fast buck. I'd just as soon be nothing and broke than to have that on my mind.

Remember Hitler was nuts but no one told the World about it till it was to late.

We are telling you ahead of time so you can make changes and secure all the information befor some other disaster takes place.

My Dad always told us kids that a stupid person doing something wrong is bad enough, but an educated person watching him with out offering

VIII

help in Correcting is just plain ignorant and crazy.

The International Union in this case is dictating procedure and if given a chance we will prove the International also said nothing about Local 5 in New York City - but the case that evolved there was hellious and the cost to the consumer was disastrouse. By the way the case there had a great deal to do with the hiring hall procedures. Here is a clipping from that case. I suggest you look at that case and read it and keep in mind we have been saying this about the union for four years now but it falls on deaf ears and unseeing eyes.

Its your ball do we play ball or pack it in.

I hear by authoize you to read & make copies of any and all statements Ive made to the F.B.I. - Justice Department, Labor Department, National Labor Relations Board.

Please respond in writing with in 20 days as to what your office Intends to do.

VIII.

The Consumer fraud occurs when you pay or the consumer pays for services it has never recieved and the contruction cost are outragously inflated and the repair work charge is absolutely obsurd I will explain this befor a proper forum that can act on the issues that are presented.

In the case in New York Local 5. If the justice department only prosecutes that Business Agent then the justice department is guilty of selective prosecution for what ever their reasons a.

You had a Labor Business Agent + his son in Arizona charged with taking money from Mexicans working on the Paloverte Nuclear Power Plant at Buck-eye Arizona he was given a trial sentenced then later given 4 yrs probation- those Mexicans were here illegaly they worked were paid and then kicked back a portion to the Labor leaders what does that kind of thing do to nuclear security- who paid for and God only knows what these people worked on

X

I am a good union man but first I'm
a good American - husband and father
What we do now will write our childrens
story and there childrens children. You
here every day the government officials
the F.B.I. and Justice Department can't
do anything unless peple come to them
and tell them when they see a crime committed.
How Sir do they justify not doing
anything when they are told almost begged
to intervene its scares me it really does
We have been threatened
the threats were second hand and from
conversations overheard and passed on.
The one carring the threat to the other
party is passing terroristic threats ment
to intimedate us and cause us to cease
voicing our alligations I will charge
them with terroristic threats
The PUC and Consumer
Advocates office won't do anything
to air our alligations I hope you do.

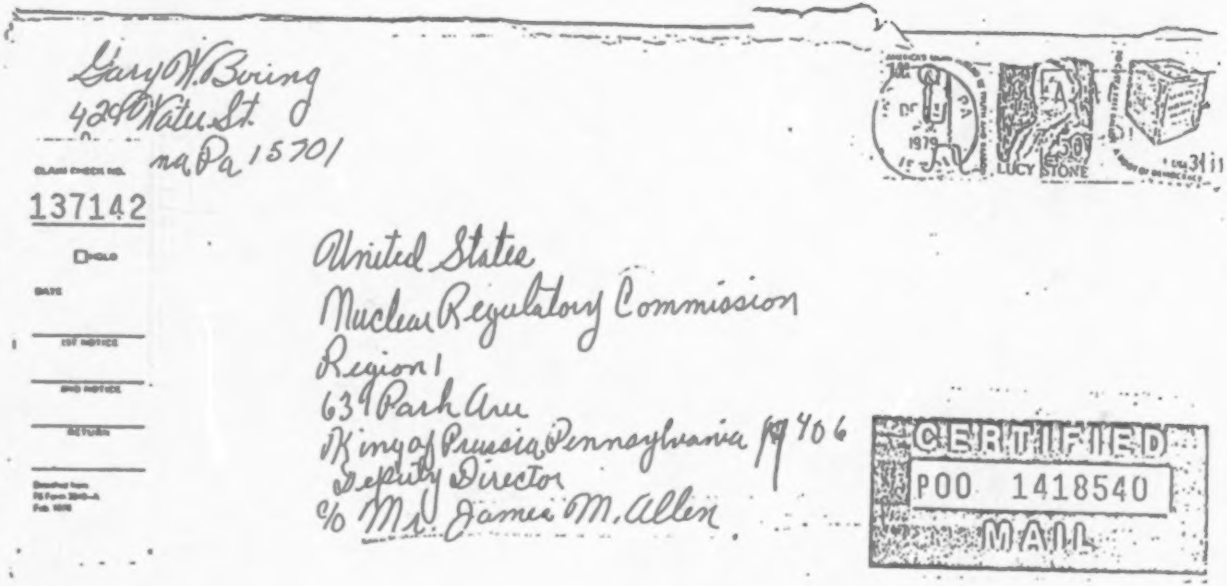
Yours truly
Gary W Boring

Please respond to this letter in 20 days as to
what action you will take if any

XI

P.S. We have asked for protection because again we have been threatened.

Mr Bob Staul a penelec employee informed my brothers wife that he overheard a discussion by Mr Morais that after our article appeared in McGraw Hill that perhaps maybe the wrong house was burned down that it might be the dogs at the other house could be shot and a fire bomb could be thrown through the window. That Sir is a threat or Bob Staal is guilty of terroristic threats for his own reasons unknown to me. if you can not afford any protection can you please enjoin the justice Department to do so.


PA
1979
LUCY STONE
50

Gary W. Boring
429 Water St.
na Pa 15701

CLAIM CHECK NO.
137142
☐ HOLD
DATE
1ST NOTICE
2ND NOTICE
RETURN

United States
Nuclear Regulatory Commission
Region 1
631 Park Ave
King of Prussia Pennsylvania 19406
Deputy Director
% Mr. James M. Allen

CERTIFIED
P00 1418540
MAIL

The CHAIRMAN. Your critics say that you have conducted a harrassment campaign against local 154 and its leadership by loading the union down with frivolous grievances that the local must respond to at the National Labor Relations Board and elsewhere at great expense to themselves. Have you ever been successful in a major grievance against the union?

Mr. GARY BORING. Senator, we have won—well, I will say we have won—a case with the labor board for mass discrimination against nonmember individuals applying for work out of that area. That case was tried before an administrative law judge, subsequently went on appeal by the union to Washington, D.C., their appeal was denied, it went to the third circuit court of appeals in Philadelphia, and at the present time I think I would be safe in saying that the board is prepared to go into back pay hearings or discuss these back pay hearings with the union.

The CHAIRMAN. At this time, without objection, Boring Exhibit No. 6 is introduced, so we have all six exhibits introduced without objection at this time.

No. 6, of course, happens to be the decision of the National Labor Relations Board, Division of Judges, in the matter of the International Brotherhood of Boilermakers versus these individuals: Wayne H. Boring, Gary W. Boring, Waldron L. Sarambo, Galen L. Boring, Edward J. Kardos, and Vernon L. Boring.

[Boring Exhibit No. 6 follows:]

1 of 79

BORING #6

JD-333-80
Pittsburgh, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,
IRON SHIPBUILDERS, BLACKSMITHS, FORGERS
AND HELPERS, LOCAL UNION NO. 154, AFL-CIO
(Western Pennsylvania Service Contractors
Association and Boilermaker Employers
Association of Western Pennsylvania Area)

and

WAYNE H. BORING, An Individual

GARY W. BORING, An Individual

WALDRON L. SARAMBO, An Individual

GALEN L. BORING, An Individual

EDWARD J. KARDOS, An Individual

VERNON L. BORING, An Individual

Cases 6-CB-4349
6-CB-4350
6-CB-4354
6-CB-4371
6-CB-4397
6-CB-4419

Matthew Franckiewicz, Esq.,
of Pittsburgh, PA, for the
General Counsel.
Glen D. Dolfi, Esq., of
Pittsburgh, PA, for the
Charging Parties.
Joseph M. Maurizi, Esq.,
of Pittsburgh, PA, for the
Respondent.

## DECISION

### Statement of the Case

DAVID S. DAVIDSON, Administrative Law Judge: The original charges in these consolidated cases were filed on April 10, 14, and 28, May 31, and June 14, 1978. The consolidated complaint issued on August 31, 1978, and was thereafter amended on January 8, 1979, and at the hearing. In its answer Respondent denies commission of any unfair labor practices.

A hearing was held before me in Pittsburgh, Pennsylvania, on February 6 through 9 and April 10, 1979. At the conclusion of the hearing the parties were given leave to file briefs which have been received from the General Counsel and Respondent. 1/ The issues raised by the pleadings and the evidence are:

1. Whether Respondent discriminated against nonmembers in making referrals for employment through its exclusive hiring hall.

2. Whether Respondent refused to accept a grievance because the grievant was not a member of Respondent.

3. Whether Respondent denied nonmembers the opportunity to sign the out-of-work list.

4. Whether Respondent threatened to refer nonmembers to more onerous work, work distant from their homes, or to no work because they refused to execute checkoff authorizations and/or because they had filed charges with the Board.

5. Whether Respondent referred nonmembers to more onerous work because they refused to file checkoff authorizations and/or file charges with the Board.

6. Whether Respondent unlawfully refused to provide information about the operation of its hiring hall to nonmembers on request.

Upon the entire record in this case and from my observation of the witnesses and their demeanor I make the following:

## Findings and Conclusions

### I. The Business of the Employers

Western Pennsylvania Service Contractors Association and Boilermakers Employers Association of Western Pennsylvania Area are multiemployer associations which negotiate and execute collective-

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1/ The parties were also given leave to file reply briefs dealing with any statistical analyses of documentary evidence which were submitted with the initial briefs. A reply brief has been received from the General Counsel. The General Counsel also filed a motion to correct the transcript, which is granted, and a number of statistical exhibits as well as Appendices to his brief explaining how the statistical exhibits were prepared and containing the basic work sheets utilized in their preparation. The Motion to Correct Transcript has been received in evidence as General Counsel's Exhibit No. 32. Appendices A, B, and C to the General Counsel's brief have been received as General Counsel's Exhibit (Continued) bargaining agreements on behalf of their members. The membership of each association is composed of employers engaged as contractors in the construction industry in and around Western Pennsylvania. During the year preceding issuance of the complaint members of each association had direct inflow in excess of $50,000. Each association has represented its member-employers in collective-bargaining negotiations with Respondent and is a party to a collective-bargaining agreement with Respondent. I find that Western Pennsylvania Service Contractors Association and Boilermaker Employers Association of the Western Pennsylvania Area and their employer-members are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act for the Board to assert jurisdiction in this case.

## II. The Labor Organization Involved

Respondent is a labor organization within the meaning of the Act.

## III. The Alleged Unfair Labor Practices.

### A. The Alleged Discrimination in Referrals For Employment

### 1. The Respondent's exclusive referral agreements and statements of procedure

Respondent has an agreement, referred to as the field construction agreement, with Boilermaker Employers Association of the Western Pennsylvania Area and an agreement, referred to as the maintenance agreement, with Western Pennsylvania Service Contractors. Each requires members of the Associations to hire individuals for employment solely on the basis of referral by Respondent. In addition to referrals under these contracts, Respondent also makes some referrals pursuant to contracts between its parent union, referred to herein as the Boilermakers International, and other employer associations. One of these agreements, referred to as the NTM agreement, governs transistory construction and field erection work and provides that each employer working under that contract may hire its first five employees from outside sources, must hire its next five employees through the local union in whose jurisdiction the work is being performed, and must hire every second employee thereafter through that local union.

NTM

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1/ (Continued) No. 33, A, B, and C. The statistical exhibits have been received as General Counsel's Exhibit No. 34 (I-XX). Respondent also filed a statistical exhibit as Appendix A to its brief which has been received as Respondent's Exhibit 4.

The provisions of the field construction agreement governing referral are as follows:

## EXCLUSIVE REFERRAL OF MEN

## Article III

Section 1. Exclusive Referral.

(a) The Employer shall, under the terms of this Agreement, request the Union to furnish all competent and qualified field construction boilermakers and boilermaker apprentices. The Employer in requesting the Union to furnish such employees, shall notify the Union either in writing or by telephone stating the location, starting time, approximate duration of the job, the type of work to be performed and the number of workmen required.

(b) In the event the Union is unable to fill requisitions for employees within forty eight (48) hours, the Employer may employ applicants from any other available source.

Section 2. Registration. The Local Union shall establish and maintain an appropriate registration facility for qualified construction boilermakers and apprentices available for employment. Applicants shall be registered on the appropriate out-of-work list for each classification in the order of time and date of registration. Each applicant for employment shall be required to furnish such data, records, names of Employers and licenses as may be deemed necessary and each applicant shall complete such form or registration as shall be submitted to him. Applicants for employment shall also list any special skills that they possess. Applicants for employment shall, upon reporting for work, provide the Employer with a copy of the above Qualification Sheet.

Applicants shall reconfirm their availability for job referral at least every two (2) weeks and be available by telephone within a reasonable time (four hours) in order to maintain their place on the out-of-work list. . .

Section 3.

A. Qualified Construction Boilermakers. Boilermakers shall be qualified for registration on a boilermaker's out-of-work list who can satisfactorily establish that they have had at least four (4) years actual practical working experience in the boilermaking trade as a foreman, subforeman or boilermaker in the building and construction industry, or who either

(1) Have successfully served an apprenticeship at the trade of field construction boilermaker under an apprenticeship program approved by the U.S. Bureau of Apprenticeship Training or State Division of Apprenticeship Standards, or

(2) Have successfully passed a competency examination that adequately tested the degree of skill and training necessary to be a competent construction boilermaker. Any question as to what constitutes a "competency" examination shall be resolved by the Joint Referral Committee referred to hereinafter.

B. Qualified Boilermaker Apprentices. Boilermaker apprentices shall be qualified for registration who can establish that they are indentured and serving an apprenticeship as field construction boilermakers under an apprenticeship program approved by the United States Bureau of Apprenticeship Training or State Division of Apprenticeship Standards.

Section 4. Referral of Men. Upon the request of the Employer for foremen, assistant foremen, boilermakers or boilermaker apprentices, the Union shall immediately refer competent and qualified registrants to the Employer in sufficient number required, in the manner and under the conditions set forth in this Agreement, from the appropriate out-of-work list, on a first in, first out basis; that is, the first name registered shall be the first name referred, provided that:

1. Request by the Employer for key men to act as general foreman or foremen shall be honored without regard to the requested man's place on the out-of-work list.

2. Bona fide requests by the Employer for boilermakers with special skills and abilities will be honored, and persons possessing such skill and abilities shall be referred in the order in which their names appear on the out-of-work list. The decision of the dispatching agent in referring such registrants is appealable to the Joint Referral Committee, as hereinafter provided.

Section 5. Non-Discriminatory Referral. The Union and the Employer agree that the referral of construction boilermakers and apprentices shall be on the following basis:

(a) Selection of applicants for referral shall be on a non-discriminatory basis and shall not be based on, or in any way affected by, Union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership, policies or requirements.

(b) The Employer retains the right to reject any job applicant referred by the Union.

(c) The Union and the Employer shall post, in places where notices to all employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring provisions of this Agreement.

(d) It is the continuing policy of the Employer and the Union that they shall not discriminate against any employee or applicant for employment because of age, race, sex, color, creed or national origin.

The agreement also establishes a joint referral committee to be composed of equal numbers of representatives of the Respondent and employers whose responsibility includes establishment of rules and regulations governing the operation of the job referral system including establishment of out-of-work lists, resolution of disputes arising out of operation of the referral system, and establishment of examinations for qualifying boilermakers for registration on the out-of-work lists.

The agreement also establishes minimum standards for the joint referral committee which include the following:

4. Applicants for Registration.

A. All applicants for registration on the out-of work lists shall be required to complete an application form setting forth required personal statistics together with a detailed record of his experience and qualifications in the trade.

B. Should any question arise, it shall be the responsibility of the Local Joint Referral Committee to determine the validity of such application.

C. If, for any reason, the Local Joint Referral Committee has reasonable doubts regarding the applicant's qualifications, it may require the applicant to take the established competency examination.

D. When an applicant wishes to register and does not have sufficient experience to qualify, his application shall be kept in a "Hold" file for future reference and the Local Joint Referral Committee shall be under no obligation to administer a competency examination.

5. Examination.

A. The examination for the classification of rigger should be designed to show that the applicant is capable of performing any and all types of rigging assignments in the boilermaker field construction trade including:

1. Ability to perform high work.
2. Set up and dismantle cranes, derricks, and hoists.
3. Rigging for all types of lifts.

B. The Local Joint Referral Committee is authorized and shall obtain from Employers working in the area information relative to welding tests for current and all future welders including dates such tests were taken, type of test taken and results thereof. Such information shall be made a part of the applicant referral record and shall be accepted by the Local Joint Referral Committee as sufficient evidence in determining competency and placement on the out-of-work list. A welder, other than above, who can establish his previous experience and qualifications to the satisfaction of the Local Joint Referral Committee shall be considered eligible as a welder on the appropriate out-of-work lists.

The Local Joint Referral Committee is authorized to establish a test designed to determine whether or not other welder applicants are eligible to be placed on appropriate out-of-work lists.

Welding Test 5//

It is understood that the Employer may request any boilermaker-welder applicant to pass the required welding test at the job site as a condition of employment as a welder.

C. The Local Joint Referral Committee is authorized to establish such written and/or oral tests for construction boilermakers which shall be of such detail that an applicant with four years' practical experience in the boilermaker construction industry could normally pass it. The test shall establish that the applicant has or has not a general knowledge of all phases of the trade, of the machinery, tools and equipment used in doing the work, and that the applicant has sufficient mechanical ability to perform any phase of the work normally expected. The work of the construction boilermaker shall be considered to include: boilermaking, acetylene burning, riveting, chipping, caulking, fitting up, grinding, reaming, impact machine operating, pre-heating, stress relieving, scaffold erecting, the safe use of cable and rope, and the handling of any type of machinery, tools and equipment used in boilermaker work.

The provisions of the maintenance agreement relating to exclusive referral are as follows:

## ARTICLE XIX

## HIRING AND TRANSFER OF MEN

The Employer agrees to hire men in any territory where work is being performed or is to be performed in accordance with the hiring procedure existing in the territory where the work is being performed or is to be performed; however, in the event the Local Union is unable to fill the request of the Employer for employees within a forty-eight (48) hour period after such request for employees (Saturdays, Sundays and Holidays excepted), the Employer may employ workmen from any source. The Employer shall have the right to move qualified Foremen, Area Foremen, Pushers, and Employees from one job assignment to another within the plant location where they are working. The Employer shall have the right to transfer General Foremen between plant locations within Local Union jurisdiction where work is being performed. By mutual agreement, Foremen, Area Foremen and Pushers may be moved between plant locations within the Local Union jurisdiction.

The Employer shall determine the competency of all employees. The Employer shall determine the number of men required on the project and shall select any employee or employees working under the terms of this Agreement to be laid off regardless of membership or non-membership in the Union.

The only written description of Respondent's hiring procedures is that set forth in Article III of the field construction agreement, and the same procedures are followed by Respondent in making referrals under both agreements. Apart from these agreements the only written instructions or procedures Respondent has provided for those utilizing its hiring hall is a statement which appeared in Respondent's November, 1977, newsletter:

> Under orders of the EXCLUSIVE HIRING HALL Article III of our Agreement as set forth by the International (see below) this office will no longer accept telephone calls concerning men being out of work. Whether members or non-members, every many who is out of work must report to this office and sign the out of work book.

* * *

> I have received comments from some of our members regarding the manning procedures of maintenance work in the Power Plants.
>
> The Unions must do everything in their power to maintain this work. Because of this, the Business Manager must have the authority to alternate people as he sees fit in the manning of this work. This is particularly true of placing the necessary skills required for a given job, such as welders, riggers, supervisors, etc. This is the criteria we must use, not the fact that any individual may or may not live near a certain job.
>
> We must satisfy our customers, the owner and contractor, to the best of our ability, in giving them the most skillful and experienced people to do their job and this is the judgement that I must exercise in placing the men. 2/

This statement was sent to all members of Respondent and to stewards for posting on bulletin boards. Respondent's Business Manager Fred Gualtieri also visited a number of jobsites and read it to those on the job.

## 2. The operation of Respondent's hiring hall

### a. The referral and registration facilities

How Respondent actually operated its referral system is not easily determined. It kept no comprehensive records of its referrals and did not preserve the lists from which referrals were made. 3/ The only witness who testified at length as to the operation of the referral system was Respondent's business manager, Fred Gualtieri, whose testimony was at times inconsistent, evasive, argumentative, and self-serving. Nonetheless, there is much in his testimony that is revealing, and that testimony when pieced together with other more fragmentary

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2/ The portion of the statement which has not been reproduced quotes verbatim Art. III, Section 2 of the field construction agreement which is set forth above.

3/ During the investigation of this case Respondent made available to the General Counsel office memoranda bearing dates from January 11, 1978 through April 10, 1978, which record referrals. These were described as an incomplete record of referrals for this period. Although the General Counsel subpoenaed for production at the hearing all similar records for the period from October 1977 through August 1978, Respondent produced no additional memoranda of this type. Business Manager Gualtieri testified that none were found in a search of its files and that no other records were kept of referrals made by Respondent.

testimony as to the treatment of individuals seeking to use Respondent's hiring hall affords a basis for developing a description of how it operated, although not for reconstructing an accurate picture of the day-to-day referrals made by Respondent.

During the times material to this proceeding Respondent maintained a set of card racks at its union hall in a room not normally open or visible to individuals who visited the hall looking for work. 4/ These racks contained cards for each of Respondent's more than 800 members as well as approximately 100 nonmembers. 5/

Apart from the cards in the racks, Respondent maintained facilities for individuals who came to the hall seeking job referral to record their interest. Until December 21, 1977, Respondent kept a bound book, referred to in the November newsletter as the out-of-work book, on a stand at the union hall for individuals seeking referral to sign. Each day the date was recorded in the book, and individuals who came to the hall on that day signed beneath it showing their names, union affiliation if any, classification, and telephone number. On December 19, Respondent replaced the out-of-work book with separate preprinted forms headed "OUT OF WORK LIST." These forms called for the same information as had previously been entered in the out-of-work book, but they were collected at the end of the day, and only the list for the current day was left out for individuals to sign or examine. There were no instructions or rules of procedure posted at the hall other than a sign directing those seeking work to sign the book or list. For convenience and to avoid confusion between these lists and the term "out-of-work list" as used in the field construction agreement, both the book and the lists will be referred to herein collectively as the out-of-work book.

### b. The use of the card racks and lists

Gualtieri testified that in making referrals he looked first to the card racks, exhausted the possibilities for referral from those with cards in the rack, and only then looked at the out-of-work book. In his testimony Gualtieri took the position that the out-of-work book was not the same as the "out-of-work list" referred to in the field construction agreement. According to Gualtieri, the book simply showed who was seeking work.

While Gualtieri's testimony thus indicates that those without cards in the racks were not considered until he had exhausted the card racks, his testimony leaves less clear the extent, if any, to which those

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4/ Although Respondent moved to a new union hall during the period covered by this proceeding, insofar as appears the relative location and the description of the racks was not materially changed in the new hall.

5/ As used in this Decision, the term nonmember includes all persons who do not hold membership in Respondent whether they are members of other locals or affiliates of the Boilermakers International, other unions, or no union.

who signed the out-of-work book but lacked cards were considered for referral. Thus, Gualtieri testified that he did not have to worry about those who signed the lists "because they are going to their own local" and that "they are not on the out of work list, because they are from other unions, and they are going back to their own organization, why would I have to worry about them." He testified further that he does not "bother" with the lists because "you could look at half of them, and see some of them are school kids on there." In addition, when Gualtieri responded to referral requests on weekends at his home, he worked from lists of names of available individuals taken from the card racks and did not have with him any names from the out-of-work book.

### c. The requirement that those seeking work sign the out-of-work book

Gualtieri initially testified that members as well as nonmembers should sign the out-of-work book so that he would know they were looking for work, consistent with the notice in Respondent's November newsletter. However, he also testified those with cards in the racks were not uniformly required to come to the union hall and sign the out-of-work book in order to be referred, that upon completion of a job, the steward called in the names of all those being laid off and that as a result their cards were placed in the racks showing that they were out of work. He testified further that those who did not trust the steward came to the hall to sign the lists. While Gualtieri's testimony does not indicate that the stewards reported the layoff only of those with cards in the racks, there is no indication that Respondent made any record of the stewards' calls indicating availability of those without cards.

Unlike Gualtieri, Respondent's Financial Secretary and Business Agent Quinn testified that all applicants were required to come to the union hall and sign the out-of-work book, and the charging parties who were nonmembers with cards in the racks, testified that they were repeatedly told that they had to sign the book in order to be referred. 6/

### d. The requirement that those seeking work reconfirm their availability

The evidence as to the requirement that applicants reconfirm their availability every 2 weeks also is conflicting. Gualtieri testified that at one time Respondent required applicants to come to the union hall to reconfirm their availability but that he stopped that practice to permit them to call in. Although Gualtieri testified that one individual with a

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6/ One of them, however, Sarambo, testified that on one occasion when he was at the union hall Gualtieri told him that it was not necessary for him to sign the book because Gualtieri knew who he was.

card in the racks was not referred because he failed to call the office to reconfirm his availability, he also testified that no record was kept when individuals called in to report that they were still out of work. He testified further that when he did not hear from an individual for 2 weeks he did nothing, that he did not remove a card if he failed to hear from an individual after 2 weeks, and that reconfirmation was a procedure that could be used but which Respondent did not use. From the fact that no record was kept when individuals called in and no action was taken when they did not, I find that reconfirmation was not required, at least of those with cards in the racks. 7/

### e. The system for assigning cards to nonmembers seeking referral

A critical question in this case is how a nonmember seeking referral through Respondent's hiring hall obtained a card for placement in the racks. During the period from October 1977 through August 1978 well over 1000 nonmembers came to the hall and signed the out-of-work book. However, while all members had cards in the racks, more than 90 percent of the nonmembers who signed the book never had cards in the racks during the same period.

Gualtieri initially testified that only those who were qualified to perform the work had cards in the racks, that not all nonmembers who came to the hall had cards in the racks because "they weren't qualified . . . so I didn't think it was worth while to give them a card," that he did not have to give anyone a card until he could prove that the applicant had 4 years experience, and that those who signed the out-of-work book who did not have 4 years experience did not have cards in the racks. However, Gualtieri also testified that he did not know the qualifications of those who signed the book until he called them and found out. Although he testified that he called almost everyone who signed the book, his testimony made it clear that he did not call those without cards until an occasion arose to seek referrants from the out-of-work book because he had exhausted the cards in the racks. Gualtieri also testified that he was familiar with the skills of many of those without cards who signed the lists and that, in any event, he took an applicant's word as to his qualifications, leaving it for a contractor to lay him off if he turned out to be unqualified.

There is some evidence from testimony of applicants to show how Gualtieri handled their applications. Ralph McAdams, a National Transient Member of the Boilermakers International, referred to commonly

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7/ Gualtieri's testimony in this regard showed characteristic evasiveness and inconsistency. Quinn's testimony with respect to reconfirmation was even less credible. Although he testified that reconfirmation was required, he then qualified that testimony and agreed that no records were kept which would indicate whether or not there had been reconfirmation. I do not credit Quinn.

as an NTM member, was a certified welder with 5 or 6 years' experience. He visited the union hall in March, did not see or speak to a representative of Respondent, and signed the out-of-work book as a sign directed. He was never called by Respondent either for referral or to check his qualifications, and no card was placed in the racks for him. On the other hand, Wayne Young and Sarambo, also NTM members, who visited the hall and spoke to Gualtieri, were given cards without inquiry into their experience or qualifications. In addition, a student, Geraci, had a card in the racks, and Gualtieri's son Michael was admitted to membership and given a card in the racks without the requisite experience for qualification.

### f. Specific evidence of preference to members

On a number of occasions nonmembers asked Respondent's officials about the availability of work and were told in response that there were varying numbers of local men loafing. In December, 1977, Wayne Young asked Quinn if there was work, Quinn replied that things were slack and that they had local people loafing. A day or two later, Young asked Fred Gualtieri about work and he replied that he had about 150 local men loafing.

On various occasions when Kardos asked about work, Gualtieri told him that he had to get his men out first, Respondent's former president Chambers told him he had men loafing and had no work for him, and Respondent's vice-president Garritan told him that he had men loafing. On several occasions when Vernon Boring spoke to Quinn, Garritan, or Chambers about work, they replied that they had 150 to 200 local men out of work. Similar statements were made by Gualtieri, Chambers, and Quinn to Sarambo, and to Wayne, Gary, and Galen Boring by Quinn. 8/

In April 1978, Wayne, Gary, and Galen Boring were at the union hall where they signed the out-of-work list. They were present with a group of men seeking referrals when Gualtieri indicated that he needed a number of men. Gualtieri then referred a number of those present to jobs, calling first for those with Boilermaker books to whom he gave referrals. Sarambo, Kardos, and Wayne and Gary Boring who were

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8/ Of those to whom these statements were attributed, only Quinn testified that he had not made the remarks attributed to him. According to Quinn, he stated that he and Respondent's agents generally replied by referring to the number of men on the board or loafing but did not tell any one who asked that he had local men loafing. As no other witness so testified, as there is substantial uncontradicted evidence of similar statements by Respondent's other agents, and as I have found otherwise that Quinn's testimony is incredible, I have not credited Quinn's version of what he said.

NTM members received referrals. Gualtieri then called for those with books of other International Unions, who were also referred. When Galen Boring asked Gualtieri to be referred, Gualtieri asked him if he had a union book. Galen said that he did not, and Gualtieri told him that he could not send him out at that time without some kind of a union book. 9/

There is also disputed evidence that in maintaining the card racks Respondent kept the cards of members in separate racks from those of nonmembers. Edward Kardos testified that he had seen the racks on a number of occasions and that there were two racks. He testified that on one occasion between October and December 1977 he observed that the cards in one rack had Respondent's number 154 on them, and that at the end of the rack was a section labeled sick list which also had cards with the number 154 under it. According to Kardos, he saw that the second rack was on the other side of the wall and contained cards which did not have the number 154 on them. He testified that he looked for his own card, did not see it, saw a card for one of the Borings, picked it up, and discovered that there were four cards, for Wayne, Vernon, and Gary Boring and for him, in the same slot. He did not touch any of the other cards.

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Vernon Boring testified that on one occasion, December 22, 1977, he went to the union hall with Kardos and that they were in the room with racks where Kardos spoke with Respondent's president. While Kardos was talking, Boring observed the rack on the right hand side inside the door and noticed the portion headed sick list. He testified that at the top of the rack there was a scotch taped sign with the number 154 on it. Boring testified that on the left hand side there was another rack. In that rack he noticed the names of a couple of NTM members whom he knew and looked for his name. He noticed four cards in a single slot near the bottom of the rack and found that they were the same four cards that Kardos had seen in the slot. There was no designation at the top of this rack. He did not look at the cards or the racks at any other time. He and his brothers were working at the time he saw his card in the rack. He did not examine the cards under the heading sick list or check the local affiliations shown on them. He did not examine the cards other than the four which were together.

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9/ Sarambo, Kardos, and Wayne, Galen, and Gary Boring testified to this incident, and these findings are based on a composite of their testimony. When Fred Gualtieri testified to this incident, he did not deny that he asked for men with union books, but testified that he asked to see their cards to make sure that there were qualified boilermakers present before going on to the rest of those present. Gualtieri claimed that everyone present at that time got a job. I find that Galen Boring was not referred that day, and do not credit Gualtieri as to his purpose or to the extent that his testimony is in conflict with that of the others.

Waldron Sarambo testified that in late October, 1977, he saw his card in the rack, that on three other occasions in December 1977 and January 1978, he looked for his card and found it missing from the rack, and that on January 10 after he inquired about his card it was put in the rack. According to Sarambo on January 10, he went to the hall with a camera and photographed the rack. He testified that at one point in October he was at one rack while Gualtieri was at the other, but otherwise was not asked whether there was one rack or two or to describe what he saw in the racks he observed. He was not asked about the photograph he took nor was it offered in evidence.

Gualtieri testified that there was only one rack, that members' cards were not kept separate from those of nonmembers, and that the only cards which were kept separately were those of students who wanted only summer work. Gualtieri testified further that there were racks on two different walls and that the cards in the two racks were arranged in order of layoff. Later, on examination by counsel for the charging parties, Gualtieri again denied that there were two racks, but then testified that the one rack did not fit on one wall and that part of it was on a second wall. Still later Gualtieri testified that trainees, apprentices, welders, and mechanics were all kept in the same rack and that there was one rack for those who were employed and another for those who were not.

Business Agent James Quinn testified that the rack, which he referred to as a board, contained cards of members and nonmembers in December 1977. While he was questioned in some detail about how cards came to be placed, moved, and removed from the board, he was not questioned about the physical characteristics of the rack.

### g. Statistical evidence

To supplement the testimonial evidence the General Counsel has prepared a number of statistical analyses of documentary evidence relating to the operation of the hiring hall. The documentary sources consist of the following: Vested Fund Reports which are computer printouts, containing alphabetized lists of all individuals who worked under Respondent's jurisdiction and showing the identity of their employers and total pay received month by month for the period from October, 1977, through August, 1978; Lists of Respondent's members, showing the month of joining for those who became members during 1978; Monthly reports showing the identity of all job stewards; Copies of the portion of the out-of-work book and the out-of-work lists covering the period from September 1977 through August, 1978; and Respondent's office referral memoranda for the period from January 11, 1978, to April 10, 1978. 10/

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10/ See note 3, *supra*

Because Respondent had no actual records of referral other than for the 3-month period indicated above, which Gualtieri testified were not even complete for that period, the General Counsel relied on the Vested Fund Reports as secondary evidence from which to infer who received referrals, making certain assumptions for that purpose. Those assumptions are fully stated in the testimony of John Johnson who prepared the analyses and in Appendix A to the General Counsel's Brief which has been received herein as General Counsel's Exhibit No. 33A. These assumptions were necessary because the Vested Fund Reports do not show when an individual started or stopped work for each employer shown. They show only the month during which an individual worked for each employer listed under his name. It has been assumed that each time the name of a new employer appears under an individual's name in the Vested Fund Reports, there was a referral to that employer. When an individual is shown as working for the same employer for two or more consecutive months, it has been assumed that his employment was continuous with that employer and the result of a single referral. When an individual is shown as working for the same employer in consecutive months but also for one or more other employers during the same months, it has been assumed that he made the minimum number of job changes, and therefore had the minimum number of referrals possible, to account for the number of employers shown. No referrals have been counted for the month of October, 1977, since part of the month fell outside the 10(b) period and there are no records to show whether October employment started during that month or carried over from employment in earlier months.

For purposes of analysis the period covered by the Vested Fund Reports was broken down into three periods, referred to for convenience herein as quarters: November, 1977 through January, 1978; February through April 1978; and May through August, 1978.

For each of these quarters the names of all individuals shown on the Vested Fund Reports were listed on tables which showed for each individual whether or not he was a member of Respondent or became a member during the period covered, the number of times and the months in which he was referred to jobs, his gross earnings for the period covered, and the dates on which he signed the out-of-work book during the period.

From these tables the General Counsel prepared a number of further analyses. One analysis compares total earnings of members during each of the quarters with those of nonmembers. This analysis shows that the average earnings of members in the three quarters were from 1.77 to 2.18 times greater than the average earnings of nonmembers who worked at some time between October, 1977 and August, 1978. It shows that when those who signed the out-of-work lists but never worked are also considered, the average earnings ratio ranged from 1.89 to 2.38.

Another set of analyses separately correlates numbers of referrals received by individuals to the number of times they signed the out-of-work book for members and nonmembers in each of the quarters.

These analyses show that in each of the quarters the overwhelming majority of the members who received single or multiple referrals did not sign the out-of-work book at all. They also show that for nonmembers there were more referrals of individuals who did not sign the out-of-work book than for those who did, but the number of nonmembers who received multiple referrals was smaller than the number of members with multiple referrals and the number of nonmembers with multiple signings of the out-of-work book but no or relatively few referrals was much greater than the number of members in these categories.

A further analysis taken from the tables developed from the Vested Fund Report shows the total number of referrals per month for members and nonmembers. That analysis shows as follows:

| Total Referrals | Members | Nonmembers | Difference | Month |
|---|---|---|---|---|
| 347 | 264 | 83 | 181 | March |
| 373 | 255 | 118 | 137 | February |
| 442 | 326 | 116 | 210 | January |
| 621 | 405 | 216 | 189 | November |
| 674 | 360 | 314 | 46 | July |
| 737 | 394 | 343 | 51 | August |
| 765 | 337 | 428 | -91 | December |
| 776 | 322 | 454 | -132 | June |
| 901 | 317 | 584 | -267 | May |
| 1092 | 421 | 671 | -250 | April |

From the union referral memoranda and the out-of-work lists for the period from January 11 through April 11, 1978, the General Counsel made correlations which showed that during this period four times as many nonmembers (380) as members (97) signed the out-of-work book; 1.62 times as many members (202) as nonmembers (124) received referrals; and 1.97 times as many referrals went to members (296) as nonmembers (150). They showed further that 232 out of 326 individuals referred (71 percent) had not signed the out-of-work book. Of these 156 were members and 76 were nonmembers. Of the 94 individuals who signed the out-of-work book and were referred 46 were members and 48 were nonmembers. Finally it showed that while 20 percent of all those who signed the out-of-work book were referred, 47 percent of the members who signed the out-of-work book were referred but only 13 percent of the nonmembers who signed the out-of-work book were referred.

Another analysis breaks down Respondent's monthly steward reports into members and nonmembers and shows that on the average there were 33 stewards a month who were members and less than 1 a month who was a nonmember. 11/

A final analysis taken from the office referral memoranda for the 3-month period starting January 11, 1978, correlates referrals with membership and shows that on a daily basis referrals of members outnumbered nonmember referrals on all but 12 days, and usually by lopsided margins.

Respondent has presented a brief analysis of its own showing the relative employment of members and nonmembers in 3 selected months, as follows:

| | Members | Nonmembers |
|---|---|---|
| October 1977 | 758 | 619 |
| April 1978 | 805 | 688 |
| August 1978 | 835 | 782 |

This analysis also shows that during the entire period from October 1977 through August 1978, 919 members and 1747 nonmembers worked in Respondent's jurisdiction.

### 3. Concluding Findings

The General Counsel concedes that Respondent's collective-bargaining agreements do not on their face describe a discriminatory referral system but contends that Respondent in the operation of its exclusive hiring hall favored Respondent's members by establishing a system of first and second class citizenship, with all members, but less than 10 percent of nonmembers, receiving first class treatment. The General Counsel also contends that Respondent violated its duty of fair representation to all employment applicants by arbitrarily determining which nonmembers received cards in the card racks, by maintaining inconsistent practices with respect to the referral of applicants, and by deviating from the contractual requirements for operation of its exclusive hiring hall.

Respondent concedes that the card in the racks are the primary source of referral and contends that they constitute the out-of-work lists referred to in the field construction agreement. Respondent

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11/ Variances and similarities in names on the steward reports and membership lists raised some doubts as to correlations. Even if all doubts were resolved in favor of Respondent, the average number of nonmember stewards per month would have been only slightly more than two.

contends that the card racks include the names of all applicants who meet minimum qualifications for referral, so that the extent to which nonmembers are referred from the out-of-work book is not a reflection of the validity of Respondent's referral system. Respondent contends further that all those with cards in the racks are treated uniformly.

The evidence shows that there was no objective basis for distinguishing between nonmembers who had cards in the racks and those who did not. While Gualtieri asserted that those without cards were unqualified, his testimony as a whole shows that Gualtieri did not know whether or not those who signed the out-of-work book were qualified. Although he testified that he always took a man's word as to his qualifications, he ignored applicant's descriptions of their skills on the out-of-work book which showed them to be certified welders, boilermakers, and mechanics, indications which showed in the absence of further inquiry that they were qualified. Indeed, even after Gualtieri referred nonmembers without cards for work, giving further indication of their qualifications, they were not given cards in the racks. When individuals came to the hall to register for work, they were not asked about their qualifications beyond what they indicated in the book, nor were they asked to document the qualifications they had. There is no indication of the basis on which Gualtieri decided that Wayne Young and Sarambo were qualified to receive cards while McAdams was not. I find that Respondent did not place cards in the racks for all qualified nonmembers who signed the out-of-work book but that it denied cards to the vast majority of those who signed the out-of-work book without any determination of their qualifications or any other objective basis. 12/

Moreover, while Respondent contends that the cards constituted the out-of-work list contemplated by the contract, as set forth more fully below, the evidence shows that in setting up the card racks Respondent ignored the requirements of the contract relative to providing registration forms and establishing tests and procedures through the joint referral committee to determine qualifications of applicants. Having created a structure different from that contemplated by the contract which ignored contract procedures and ignored qualifications of nonmember applicants, Respondent cannot rely on the contract as authorizing the use of the cards as an out-of-work list.

Respondent does not contend, nor could it successfully, that the burden was on nonmembers who sought referral to request cards for placement in the card racks, for from apart the fact that there is no evidence that members or nonmembers who had cards had been required

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12/ Quinn's testimony that Respondent provided cards for all individuals who signed the out-of-work book is patently incredible.

to request them, Respondent gave no notice of any kind to applicants that cards were needed or that the card system even existed. 13/ If Respondent desired to rely on the cards rather than the out-of-work book, the burden was on Respondent to inform all applicants of their existence and how they were obtained.

In the light of these conclusions, I find that the system inherently favored members over nonmembers. All members had cards in the racks, and in making referrals Gualtieri exhausted the racks before turning to the out-of-work book. While some nonmembers had cards, the vast majority did not, and the very method of operation described by Gualtieri insured that all members were considered for referral before any nonmember without a card, regardless of when they indicated their availability for referral. Indeed, what Gualtieri's testimony leaves in doubt is not whether members were favored but whether the signing of the out-of-work book by nonmembers had any significance. Thus, in his testimony Gualtieri disparaged the significance of signing the book, indicating that he sometimes ignored names on the assumption that the signers would return to their own locals and that he did not bother with the book. There is confirmation of the meaninglessness of the out-of-work book in the analysis by the General Counsel of correlation between signing the book and referrals for nonmembers. In each quarter large numbers of nonmembers received referrals without signing the out-of-work book, while many nonmembers signed the book a number of times without being referred. This evidence suggests that as in the case of the April 1978 incident described in the record, when Respondent exhausted the cards in the racks it as likely to refer those who happened to be at the union hall as it was to call those who previously had signed the out-of-work book.

There are further indicia of discrimination against nonmembers apart from that inherent in the system described above. As set forth above there is disputed evidence that Respondent maintained separate racks for members and nonmembers' cards.

The General Counsel's evidence is limited to testimony of single observances of separate racks by Kardos and Vernon Boring, neither of whom examined closely the cards in the racks. Sarambo, who had access to the racks with camera, was not asked the critical questions, answers to which might have further corroborated or else contradicted Kardos and Boring, and there is no indication as to what if anything his photographs showed. This evidence is not the strongest evidence on which to rest a significant finding.

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13/ Plumbers Local Union No. 17 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (FSM Mechanical Contractor, Inc.), [illegible] NLRB 1262, enf'd 575 F. 2d 585 (C.A. 6).

However, while Respondent clearly was in a superior position to provide witnesses who could describe the racks in detail, the testimony of its witnesses was even less compelling. Gualtieri, who testified principally as an adverse witness called by the General Counsel, from the outset showed that his credibility would be vulnerable to attack for a variety of reasons, and his testimony as to the racks demonstrated the characteristics which impaired his testimony as a whole. Certainly if there was ever a witness in need of corroboration, it was Gualtieri. Yet Respondent presented only a single additional witness, Quinn, to testify about the racks, and his testimony shed almost no light on the physical set up of the racks, was inconsistent with Gualtieri's testimony as to the relationship between the cards in the racks and the out-of-work book, and was inconsistent as well with the evidence that only a fraction of those who signed the out-of-work book had cards in the racks.

Thus, while the evidence as to the racks adduced by the General Counsel is relatively weak, it is at least understandable that further corroboration would not be easily found. But the evidence from Respondent's officials, with its internal and external contradictions fails totally as refutation, and it is not understandable that Respondent lacked resources to develop a convincing record in this regard if Respondent's version of the facts is correct. In the light of these considerations as well as the evidence otherwise which shows favoritism based on union membership, I have credited Kardos and Vernon Boring and find that Respondent maintained separate racks for the cards of members and nonmembers as described by them.

While there is no evidence to show how in practice Respondent utilized the two racks, the very maintenance of separate racks warrants an inference of discrimination against the nonmembers with cards, for nothing in the system warranted or required separate racks. Indeed, maintenance of separate racks could only make operation of a nondiscriminatory referral system more difficult, and it cannot be assumed that Respondent maintained separate racks for no purpose. In the absence of any indication or suggestion of a legitimate business purpose for maintaining separate card racks for members and nonmembers, I find the maintenance of separate racks evidence of an intent to give different treatment to the two groups.

Further indication of discrimination lies in the frequent response by Respondent's agents to nonmembers asking about work that no work was available because varying numbers of local men were loafing. Any possible ambiguity in what was meant by "local men" is eliminated by the following considerations. Respondent did not maintain out-of-work lists based on residence, although permitted by Article III of the field construction agreement. All those to whom these remarks were made resided in Respondent's geographical jurisdiction, and Gualtieri took the position that referrals should not be based on geographical distance from jobs. In these circumstances the repeated references to loafing local men can only be construed as references to

Respondent's members, and they give added strength to the inference to be drawn from the maintenance of separate card racks that even nonmembers with cards were not given the same consideration for referral as members. 14/

Whether or not the statistical evidence independently establishes disparate treatment of members and nonmembers, as the General Counsel appears to contend, I would agree that it gives further support to the inference of discrimination drawn above. Respondent has generally attacked the premises of the General Counsel's statistical exhibits but has not sought to deal with their individual significance. Respondent's major argument, that the card racks, and not the out-of-work book, contained the names of all qualified applicants and were the proper source for referrals has already been rejected. The arguments that Respondent's referral records were incomplete and that the computer printouts do not reflect order of referral are also without merit. There is no indication that the referral sheets furnished by Respondent for the 3-month period starting January 11, 1978, were not representative of referrals made during that period or the entire period covered by the complaint. The referral sheets came from Respondent's files, and there is no reason why Respondent should have selected,saved,or furnished the General Counsel sheets which distorted Respondent's referrals against its interests. To the contrary, Respondent's failure to produce any similar records for the period from October, 1977 through August, 1978, when subpoenaed by the General Counsel and the vague testimony concerning the maintenance and disposition of such records warrants an inference that such records were either destroyed or deliberately withheld and that production of further referral records would not have aided Respondent's cause. 15/

With respect to the absence of any indication of the order of referrals in the computer printouts, whatever errors arise from the General Counsel's assumptions, they are no more likely to have affected the analysis of nonmember referrals than that of member referrals. These analyses do not purport to reflect with accuracy referrals in response to signings of the out-of-work book; they do reflect relative

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14/ Gualtieri's statement to Kardos that he had to get "my men" out first, in the absence of any explanation, also supports this inference as does the April hiring hall incident described above.

15/ Gualtieri testified that the form used in making these reports was more than 15 years old but could shed absolutely no light on the lack of similar records in Respondent's files for the period in question, despite the fact that when the General Counsel initially inspected the records for the 3-month period, Respondent had such reports for almost every day. Gualtieri's denials of knowledge of the explanation for this discrepancy is incredible, and Respondent cannot now take advantage from the absence of what it failed to produce.

treatment of members and nonmembers by Respondent in referring applicants for employment. Finally, failure to show order of referral is completely immaterial as to the large number of referrals of individuals who never signed the out-of-work book, for clearly all individuals referred without signing the out-of-work book were favored over those who had.

Respondent also contends that the statistical summaries are not an accurate reflection of favoritism because not all nonmembers who signed the out-of-work book were qualified to work. The related contention that all those without cards were unqualified has already been rejected. The question remains whether among nonmembers without cards there were a sufficient number of unqualified applicants to negate any inference of favoritism which might otherwise be drawn from the comparisons of nonmember referrals to member referrals. If one were required to draw the inference of favoritism from the statistical information standing alone, this contention might have merit, but it must be rejected when the statistical evidence is viewed in the light of the other evidence of favoritism as well as the evidence that Respondent relied on nonmembers' own assessment of their qualifications, that Respondent made no systematic effort to learn qualifications of applicants or to separate the qualified from the unqualified, and that the vast majority of nonmembers in signing the out-of-work book indicated that they worked in classifications which qualified them for referral.

When taken in the context of the other evidence, I find that the statistical analyses strengthen the inference of favoritism of members over nonmembers in Respondent's referral practices. It shows that in each quarter analyzed, individual average earnings for nonmembers have been roughly half those for members, indicating that members consistently have received more work than nonmembers. While the number of referrals of members per month remained relatively constant, averaging 340 and fluctuating between 225 and 421, the number of referrals of nonmembers per month has varied widely between busy and slow months from 81 to 671. These figures confirm that members have received preference in referrals to available work and that nonmembers are referred after the possibilities for referring members have been exhausted. The same conclusion is supported by the comparison of referrals to signing the out-of-work book. Many members who never signed the out-of-work book or signed it infrequently tended to receive multiple referrals during each of the quarters. On the other hand many nonmembers, including those who signed the out-of-work book on a number of occasions, received no referrals or single referrals during the same quarters. In each respect, earnings, total referrals month by month, and correlation of referrals with signing of the out-of-work book, the statistical evidence supports the conclusion that members are favored, that they receive relatively full employment, and that members and nonmembers are referred not in relation to when or how often they sign the out-of-work book but in relation to the level of employment of members at any particular time.

Respondent contends that its analysis which compares employment of members to nonmembers shows that referral of nonmembers was not disproportionate to that of members. Apart from the fact that Respondent has presumably chosen the 3 months most favorable to its position in making its analysis, the numbers do not support its contention or overcome the inferences to be drawn from the testimony and the General Counsel's statistical analyses. Despite the fact that approximately twice as many nonmembers as members sought referral, slightly more members than nonmembers were employed in the months chosen. Thus, while 80 to 90 percent of Respondent's members were employed during these months, only one-third of the nonmembers who utilized the hiring hall were employed during the same period. Bearing in mind that many members received work without even signing the out-of-work book while many nonmembers signed the book without receiving work, the employment figures relied on by Respondent if anything support the inference of favoritism of members. Moreover, when considered in the light of the evidence as to average earnings and multiple referrals, Respondent's figures are not inconsistent with the inference that members receive relatively full employment while the jobs of nonmembers are of shorter duration and that nonmembers are referred only after members are at work or have declined referral.

The General Counsel contends that the evidence also shows discrimination in the referral of stewards and general foremen. As to stewards Gualtieri testified that approximately 10 percent of the stewards referred were nonmembers. The analysis of Respondent's monthly steward reports prepared by the General Counsel shows that Gualtieri's estimate was high and that the actual proportion of nonmembers referred as stewards during the period in question was 6 percent or less. 16/ Those who serve as stewards receive as a benefit exemption from assessments worth 2 1/2 percent of their pay. Under Respondent's by-laws stewards are appointed by Respondent's business manager. The record does not establish that stewards receive preference in referral or when they are appointed as stewards in relation to the time of their referral.

Contrary to the General Counsel, I find no evidence of discrimination in referral in these facts. Unlike the Ironworkers cases, 17/ on which the General Counsel relies, there is no evidence

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16/ See note 11, supra.

17/ International Association of Bridge, Structural & Ornamental Iron Workers Local 480, AFL-CIO (Building Contractors Association of New Jersey), 235 NLRB 1511; International Association of Bridge, Structural & Ornamental Iron Workers, Local 373 (Building Contractors Association of New Jersey), 235 NLRB 232; International Association of Bridge, Structural & Ornamental Iron Workers, Local 373 (Building Contractors Association of New Jersey), 232 NLRB 504; International Association of Bridge, Structural & Ornamental Iron Workers, Local 45 (Building Contractors Association of New Jersey), 235 NLRB 211; International Association of Bridge, Structural & Ornamental Iron Workers, Local 45 (Building Contractors Association of New Jersey), 232 NLRB 520.

here that stewards as such were referred out of sequence and that designation of members as stewards was for the purpose of or had the effect of favoring them for referral over nonmembers. 18/

With respect to foremen, the field construction agreement permits employers to request specific individuals to serve as foremen, but provides that when no such request is made, Respondent selects those to be referred as foremen. Gualtieri testified that overall about 35 percent of those referred were nonmembers and that about 20 percent of the foremen selected by Respondent were nonmembers. Gualtieri also testified that employers mostly requested specific foremen. From these figures the General Counsel argues that the proportion of nonmembers selected by employers is much higher than that selected by Respondent, that the small proportion selected by Respondent cannot be based on objective considerations, and that Respondent gives preference to its members in referral of foremen.

Whether or not the evidence as to foremen standing alone would independently warrant an inference of discrimination, it seems clear from the above that Respondent's referral system inherently discriminated in the referral of foremen as well as others, that any discrimination in selection of foremen was part of a systematic favoring of members over nonmembers, and that Gualtieri's testimony tends to confirm rather than negate the existence of such discrimination. In these circumstances, I find that members were preferred for referral as foremen. Such preference violates Section 8(b)(2) and (1)(A) of the Act. 19/

The General Counsel also contends that Respondent violated a duty of fair representation owed those who used its hiring hall. Generally, in operating an exclusive hiring hall, a union owes a duty of fair representation to all applicants for referral, and it may not act arbitrarily without objective criteria or standards, or in disregard of the provisions of its collective-bargaining agreements. International Association of Bridge, Structural and Ornamental Iron Workers Local No. 433 (Associated General Contractors of California, Inc.), 228 NLRB 1420, 1437-1440, enforced 600 F. 2d 770 (C.A. 9); Local 394, Laborers' International Union of North America, AFL-CIO (Building Contractors of New Jersey), 247 NLRB No. 5.

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18/ For the same reason, Local Union 798 of Nassau County, New York; Brotherhood of Painters and Allied Trades, AFL-CIO (Nassau Division of the Master Painters Association of Nassau-Suffolk Counties, Inc.), 212 NLRB 615, on which the General Counsel also relies is distinguishable.

19/ Local Union No. 725 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (Powers Regulator Company), 225 NLRB 138, 144-145, enf'd 572 F. 2d 550 (C.A. 5).

The General Counsel points to a number of respects in which Respondent acted arbitrarily and/or in disregard of the hiring hall procedures set forth in its field construction agreement and incorporated by reference in the maintenance agreement. Thus, in deciding whether or not an applicant received a card in the racks, taking the evidence most favorably to Respondent, Respondent acted without system or standards. Most nonmembers who signed the out-of-work book never received cards, were never told that they needed cards to assure referral, and were never questioned about their qualifications. On the other hand, some of those who pursued Respondent's officials received cards, with no greater demonstration of their qualifications than that made by those who did not.

Although an out-of-work book was provided, its use by Respondent remains unclear. Quite clearly it was not the primary source of referrals, but whether it was even the secondary source is shrouded by Gualtieri's inconsistent testimony and evidence indicating that referrals were sometimes made from among those who happened to be present at the union hall when men were needed. Even though Respondent in November, 1977, informed its members and others that it would no longer accept telephone calls from those who were out of work and that everyone must report to the union hall and sign the out-of-work book, that requirement was at best unevenly enforced and in essence unenforced as to union members when Gualtieri continued to act on the basis of telephone calls from job stewards. Gualtieri's testimony in general reflected the use of changing and inconsistent standards and indicates that apart from the preference given those with cards in the racks over those without them, the referral system was operated in a highly subjective fashion, without objective criteria or consistency.

The evidence also shows that the provisions of the field construction agreement relating to hiring hall procedures have not been followed in significant respects.

Although Article III, Section 5, requires posting of all provisions relating to the functioning of the hiring hall, Respondent posted nothing except a sign advising applicants to sign the out-of-work list. Thus, it not only failed to advise applicants of their rights and obligations under the agreement, but affirmatively led them to believe that by signing the out-of-work list they had done what was necessary to register their availability for employment.

Article III, Section 4, requires that the Union refer competent and qualified registrants from the appropriate out-of-work list on a first in, first out basis. Section 8 provides that Respondent shall establish and maintain an appropriate registration facility for qualified applicants, who are to be registered on the appropriate out-of-work list for each classification in the order of time and date of registration. Each applicant shall be required to furnish such information as to past employment and qualifications "as may be deemed necessary" and "shall complete such form or registration as shall be submitted to him." While Respondent purported to establish and maintain a registration facility, for those who lacked cards on the racks it was a sham. Applicants were not required to furnish information as to past employment and qualifications other than the description of their classification, and except for the relatively few nonmembers who were given cards in the racks, nonmember applicants were given no form to complete other than the out-of-work book. When Respondent referred applicants, it chose to ignore the out-of-work book and treated the cards in the racks as the registration facility despite the fact that most nonmember applicants were not told of their existence or given any opportunity to obtain cards. If the cards were the list, then Respondent failed to establish and maintain an appropriate registration facility. If the out-of-work book was the list, then Respondent failed to make referrals from the list as required on a first in, first out basis. In either case Respondent failed to follow the contract.

Article III, Section 2, also requires that applicants reconfirm their availability at least every 2 weeks. As set forth above, at least for those with cards in the racks, this requirement was not enforced, giving them priority for referral over all signers of the out-of-work book no matter how long since they last confirmed their availability.

Article III, Section 6, requires establishment of a joint referral committee with specified functions. As set forth above, the joint referral committee has not established tests and procedures to determine qualifications, and in addition Gualtieri has purported to act in its name although not a member of the committee. Article III, Section 4, provides for honoring employer requests for boilermakers with special skills by referral of persons possessing such skills and abilities in the order in which their names appear on the out-of-work list. Gualtieri's testimony indicates that this provision has been disregarded by honoring requests for men with special skills by name and by referring the most qualified individual rather than the first person on the list who possessed the requisite qualifications.

The deviations from the contractual procedures go to the heart of the referral system, the maintenance and administration of the referral lists, and had obvious direct impact on the employment opportunities of applicants for referral who sought to utilize Respondent's hiring hall.

In summary, I find that Respondent has operated its hiring hall under exclusive referral agreements in such a fashion as to give preference in opportunities for referral to its members over nonmember applicants, that it has operated its referral system in highly subjective fashion without objective criteria or consistency, and that it has operated its hiring hall in substantial disregard of written procedures which purport to govern its operation. For these reasons I find that in the operation of its hiring hall Respondent has caused employers to discriminate in hiring against nonmembers and in favor of members and has violated its duty of fair representation owed to those seeking employment through its hiring hall, thereby violating Section 8(b)(2) and 8(b)(1)(A) of the Act. 20/

### B. The Alleged Refusal to Process a Grievance

On the afternoon of September 18, 1978, Waldron Sarambo went to the union hall. The only other person there was John Gualtieri, who was locking the hall and preparing to leave. Sarambo told Gualtieri that he was there about a problem he had on a job and that he wanted to file a grievance. Gualtieri did not question Sarambo about his grievance but replied that the grievance procedure was for local hands and he left. Sarambo, who was not a member of Respondent, did not speak further to John Gualtieri or to Business Manager Fred Gualtieri about the matter. 21/

John Gualtieri is a brother of Fred Gualtieri. Since July 3, 1978, John Gualtieri has been a full-time employee of Respondent serving as assistant to William Lawlor, who is in charge of Respondent's apprenticeship and training program. Both were described by Fred Gualtieri, who appointed them, as "agents working under the training program." Their basic responsibility is to see that the training program is carried out, but if other agents are not present at the union hall, they can refer individuals to jobs on their own authority.

There is little question that John Gualtieri was an agent of Respondent and was held out to others as such. When he was alone at the union hall he referred individuals to jobs in the same fashion as any business agent and insofar as any visitor to the hall could tell, when he was alone at the hall he had authority generally to act and speak on behalf of Respondent. I find that John Gualtieri was held out to be public as an agent of Respondent with authority to transact business with those coming to the union hall for referral or other assistance and to speak for Respondent in response to their requests. 22/

20/ The complaint separately alleges that Respondent discriminatorily applied its rule requiring applicants to sign personally an out-of-work list in favor of members and against nonmembers. As found above, Respondent appears generally not to have required those with cards in the racks to sign the list while requiring certain of the charging parties and other nonmembers without cards to do so. These findings have been relied upon as indicia of general discrimination and arbitrariness in the operation of the hiring hall. It would be superfluous to make independent findings of violation based on the same evidence, as the remedy in any event would be the same.

21/ Sarambo's testimony as to his conversation with John Gualtieri is uncontradicted and credited.

22/ Carpenters District Council of Denver & Vicinity (Hensel Phelps Construction Co.), 222 NLRB 551; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 70 (Lucky Stores, Inc.), 226 NLRB 205.

Respondent had a duty to accept, investigate, and process grievances without regard to the membership of the grievant. M. Eskin & Son, 135 NLRB 666, 670, enf'd as modified, 312 F. 2d 108 (C.A. 2). Gualtieri's statement to Sarambo that the grievance procedure was for local hands, without further explanation, can only be construed as conveying to Sarambo that the grievance procedure was restricted to members of Respondent and that his grievance would not be accepted because he was not a member. By this statement Respondent restrained and coerced Sarambo in violation of Section 8(b)(1)(A) of the Act. 23/ Moreover, in his effort to file a grievance Sarambo was not obligated to continue looking for a union official who would accept it. Rather he was entitled to rely on Gualtieri's statement as indicating that further efforts on his part would be futile. I find that Gualtieri's statement to Sarambo thus amounted to actual rejection of Sarambo's grievance because he was not a member and that Respondent also thereby violated Section 8(b)(1)(A) of the Act. 24/

### C. The Alleged Denial of the Right to Sign the Out-of-Work List

On September 25, 1978, Gary, Wayne, and Vernon Boring went to the union hall together. They saw John Gualtieri there and each asked if he could sign the out-of-work list. 25/ Gualtieri said that they could not, and they asked the reason. Gualtieri told them to go see their lawyer. Vernon also asked how many jobs an individual could refuse before he was moved to the bottom of the referral list. Gualtieri again told him to go see his lawyer. 26/

The refusal to permit nonmembers to sign an out-of-work list violates Section 8(b)(1)(A) of the Act. Local Union No. 630, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry etc. (Ebasco Services, Incorporated), 222 NLRB 525-525-526.

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23/ Highway and Motor Freight Employees Local Union No. 667, etc. (Owens-Corning Fiberglass Corporation), 228 NLRB 398.

24/ M. Eskin & Son, supra.

25/ Gary Boring testified that the list was not in sight. On some prior visits to the hall, the list had been removed from a desk drawer when they asked to sign it.

26/ These findings are based on a composite of the testimony of Gary, Wayne, and Vernon Boring. John Gualtieri testified initially that he never met the Borings before the hearing in this case, did not know who they were, and did not know what day they were talking about. Then, however, he testified in detail as to his version of the meeting described by the Borings. I find the two branches of his testimony irreconcilable and do not credit him.

Here, one defense suggested for the otherwise apparent violation of the Act is that it was not necessary for the Borings to sign the out-of-work list as their names were already on it. A second is that there were jobs available at the time the Borings came to the union hall, making it unnecessary for them to sign the list. With respect to the first, while it appears that Respondent did not require those with cards in the racks to sign the out-of-work list as a condition of referral, there is no indication that the Borings or other nonmembers were aware of how the referal system really worked, and at times they and others were told that it was necessary for them to sign the list. In addition, the November 1977 notice, the last written instruction on the subject, stated flatly that all men who were out of work were required to report to the union hall and sign the out-of-work list. Whether or not signing the list was necessary, there was every reason for the Borings to believe that it was, and there was no detriment to Respondent if they were permitted to sign. Moreover, John Gualtieri did not tell them it was unnecessary to sign the list but refused to let them sign and referred them to their lawyer when they sought the reason. The reference to the Borings' lawyer as well as the refusal to let them sign or state a reason demonstrate that Gualtieri's action was based not on a belief that it was unnecessary for them to sign, but on hostility to the Borings. The second suggested defense, that there was work available, is based on Gualtieri's testimony which I have rejected. However, even if Gualtieri had offered the Borings jobs which they had rejected, there was still no reason to deny them opportunity to sign the list. As Fred Gualtieri's testimony makes clear, those with cards in the racks often rejected referrals without penalty, and the referral system did not require an applicant to accept any referral offered him. I find that by refusing to allow the Borings to sign the out-of-work list on September 25 Respondent violated Section 8(b)(1)(A) of the Act.

### D. Alleged Threats and Discrimination against Gary and Wayne Boring on September 26

After Gary, Wayne, and Vernon Boring left the union hall on September 25, they went to their attorney's office, and he spoke by telephone to Fred Gualtieri. That evening William Lawlor telephoned the home of Gary Boring and told Gary and Wayne that there was a breaching job for them with Rust Engineering at the Keystone Generating Station in Shelocta, Pennsylvania, but that there was no job available for Vernon. Lawlor told them to come to the union hall the next morning to get a referral slip before going to the jobsite. 27/

The next morning Gary and Wayne Boring went to the union hall, and Lawlor made out referral slips for them. Wayne Boring asked what kind of work it would be, and Lawlor said that it would be the breaching on the No. 2 stack. After they paid an administrative fee, Lawlor then asked them to execute checkoff authorizations on behalf of Respondent.

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27/ Gary and Wayne Boring spoke separately to Lawlor. Gary testified without contradiction that Lawlor told him that the job was on the breaching.

Both refused to sign, and Lawlor asked Wayne his reason. He replied that there were charges pending before the NLRB at that time, that the checkoff authorization was being questioned, that he felt that it was illegal, and that he would not sign. 28/

Lawlor attempted to reach Fred Gualtieri by telephone, and after about an hour, Gualtieri called back. Lawlor explained to Gualtieri that Wayne and Gary would not sign the checkoff authorizations, and then put Wayne on the phone to speak to Gualtieri. Gualtieri told Wayne that he was tired of all the "bullshit," that they had bitched about paying the 20-cent social fund deduction before, and that if they thought they were going to pay their dues some other way and not sign the card, he would refuse to send them out to work. Then Gualtieri said he would send them on a stack job on a 3-day job, but that it would be the last time that they would work near their home.

After this conversation the Borings remained in Lawlor's office, and Gualtieri telephoned again to speak to Wayne. Gualtieri repeated much of what he had said before, mentioning also that they had run to the NLRB with their complaint about the social fund and that he was tired of the "bullshit" over 20 cents. Gualtieri again repeated that he could send them on a stack job and said that he was sending them on a job near their home and they were giving him a hard time. Wayne repeated that he would not sign the card and handed the telephone back to Lawlor. After Lawlor spoke for a few minutes, he gave the telephone to Gary. Gualtieri told Gary that he was tired of their running to the Board and of the money they were costing him over the 20 cents. Gualtieri said that he would call his lawyer and file charges and that he had the same right to file charges as they did. Gary replied that Gualtieri could do what he thought was right and that he would do what he believed was right.

Gualtieri then mentioned the job to which they were being referred and said that they were fighting over the checkoff authorizations, that they were running to the Board, and that he would send them on the job but that would be the last job around their home that they would get.

After talking to Gary, Gualtieri again spoke to Wayne and told him that he was going to send him to the job but it would be the last time he would work close to home. Gualtieri also said that he would send to the job dues checkoff cards that they had previously signed for other companies. 29/

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28/ Gary and Wayne Boring so testified without contradiction.

29/ Wayne and Gary Boring had previously signed checkoff authorizations on which they crossed out references to the social fund but had found that the deductions for the social fund were made notwithstanding.

The findings as to these conversations between the Borings and Lawlor and Gualtieri are based on a composite of the testimony of Wayne and Gary Boring. Lawlor did not testify as to (Continued)

The Borings then left for the Keystone job and arrived there at lunchtime. When they started to work, they discovered that they were assigned to stack work and specifically to hang rigging at the top of the stack which was 800 to 850 feet high. Breaching work is performed on a duct for air flow from a boiler to a stack and is usually about 125 feet above ground level. Stack work is performed on the steel liner inside a stack at heights up to 850 feet. Stack work is more hazardous than breaching because of the swaying of the stack, which on the Keystone job had caused bolts and brackets to loosen. During the time the Borings were on the job there were five or six other boilermakers on the job also assigned to similar work. The Borings stayed on the job through the following day, and at the end of that day both quit. In their experience as boilermakers, neither of the Borings had ever done stack work before.

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Employees ordinarily have a right to refuse to sign a checkoff authorization for any reason at all, and any conduct which coerces an employee in his attempt to exercise such right violates his Section 7 rights, whether engaged in by his employer or a union. 30/ Here, when the Borings refused to sign the proffered checkoffs, Lawlor called Gualtieri who threatened variously that unless they signed the checkoffs he would not refer them at all, that he would not refer them to jobs near their homes, and that he would refer them to undesirable stack work. The threats were explicitly based not only on their refusal to sign the checkoff authorizations but also on their previous filing of charges with the Board, also protected activity. These were all threats to retaliate against the Borings by impairing their employment opportunities. They were clearly coercive and violated Section 8(b)(1)(A) of the Act.

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29/ (Continued) his conversations with them. Gualtieri first denied that he talked to the Borings about signing the cards. Then after being reminded of Lawlor's call to him, Gualtieri testified that he asked one of the Borings what part they refused to sign, that Boring replied that he did not want to sign for the social fund, and that Gualtieri said "Okay, fine, scratch it out, and sign it," and that was all the conversation he had. On cross-examination Gualtieri testified that the refusal to sign created bookkeeping problems for contractors but did not create any problems for Respondent. Gualtieri denied that he told the Borings to sign the checkoff authorizations. Gualtieri also testified that he was excited in his telephone conversation with the Borings "as I always am." The unrebutted circumstances described by the Borings, the inconsistencies in Gualtieri's testimony as to this incident, and the general deficiencies in his testimony, as well as the lack of plausibility that the excitable Gualtieri spoke to the Borings so calmly or briefly persuade me that his version cannot be credited.

30/ Jo-Jo Management Corp., 225 NLRB 1133, 1143; Hope Industries, Inc., 198 NLRB 853, 857, enf'd 481 F. 2d 1399 (C.A. 3).

With respect to the Keystone referral, the General Counsel contends that the assignment of the Borings to stack work was a direct implementation of Gualtieri's threat. The circumstances set forth above strongly support an inference that after his conversations with the Borings, Gualtieri caused the nature of their referral to change. Thus before the issue over the checkoff authorizations arose, Lawlor twice told the Borings that they were being referred for breaching work. Yet after Gualtieri's extended coercive and unsuccessful effort to induce the Borings to sign the checkoff authorizations, the Borings were assigned to stack work, as Gualtieri had threatened, and Lawlor who referred them did not testify to explain the change. To be weighed against that inference is Gualtieri's uncorroborated testimony that he played no role in the referral and the evidence that all boilermakers on the job at the time the Borings were there performed stack work. As for Gualtieri's testimony, I find his credibility both in general and as to his conversations with the Borings relating to this incident too impaired to credit his denial. As for the work available at Keystone, counsel for Respondent proposed to stipulate that the Borings worked in a crew of six who went to the top of the stack to rig the job which took more than 2 days but that there was other work which had to be done on the job as well as the rigging. He also asserted that the rigging was the only work done on the job for the first 2 days and that it had to be set up before the other work on the job could be done. However, no such stipulation incorporating these facts was reached, although there was a stipulation that there was breaching on the stack and the Borings testified that while they were at the jobsite all the boilermakers at the site performed stack work. Thus, it appears that while counsel contended that no breaching work could be performed on the job until after the rigging was completed, the evidence establishes only that there was breaching work to be done on the job and that it was not done during the 2 days the Borings were on the job. In the absence of affirmative evidence that breaching work could not be done until the rigging on the stack was completed or testimony from any representative of Rust Engineering to describe its request for boilermakers which resulted in the referral of the Borings, I find this evidence insufficient to establish that there was no breaching work to be performed when the Borings arrived at the job or to overcome the inference that the nature of their referral was changed after Gualtieri's unsuccessful attempt to induce them to sign the checkoff authorizations. I find further that the change in the nature of their referral was caused by the refusal of the Borings to sign checkoff authorizations and their filing of charges and violated Section 8(b)(1)(A) and (2) of the Act.

### E. The Alleged Refusal to Furnish Information

On May 2, 1978, Wayne Boring sent the following letter to Business Manager Gualtieri:

> Would you please furnish me with a list of job referrals that were made after January 28, 1978, up to the present date, which is the date you receive this letter?

> I request [illegible] this information contain the following:
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> a. Name of the person referred.
> b. What job he or she was referred to and it's duration.
> c. Name of the Employer.
> d. The basis for each referral and how it was made.
>
> It is imperative that I recieve this information so that I may determine weather I have been discriminated against in job referrals. (sic)

Respondent did not reply to this request or furnish any reason to Boring for its failure to do so.[31]

The General Counsel contends that Respondent's duty of fair representation includes the duty to deal fairly with an individual's request for information regarding the operation of a hiring hall, that Respondent's failure to supply Boring with the requested information, unsupported by any reason, was arbitrary, and that it therefore violated Section 8(b)(1)(A).

The extent of a union's obligation to furnish hiring hall information or the form in which such information must be supplied need not be considered in this case, for here Respondent simply ignored Boring's request and made no effort to offer any means for Boring to obtain any of the information he sought. Only several months earlier, on December 18, 1977, Respondent had taken action which had the effect of preventing those who signed the out-of-work list from learning the identities of those who had signed the list before them by replacing the bound out-of-work book which applicants previously signed with separate sheets which were left out only for one day at a time. In a moment of candor Gualtieri conceded that the change was made because people were photographing the lists and taking down the names of all those who signed the list. Despite his efforts to explain away that testimony, it is clear that by that action Respondent deliberately sought to frustrate efforts of applicants to gain information about the operation of the referral system. Before the change in the form of the out-of-work list, several of the charging parties in this case, none of whom were members of Respondent, had filed other charges against Respondent. As found above, the evidence shows that at the time the daily lists were substituted for the book and at the time Wayne Boring requested information as to the operation of the hiring hall, Respondent was discriminating in referrals against the vast majority of nonmembers who sought to utilize its hiring hall and specifically was referring members who had not signed the out-of-work book ahead of nonmembers who had. I find the inference warranted that Respondent refused to furnish any of the requested information to Wayne Boring because he was a nonmember of Respondent who had previously filed charges against Respondent and because Respondent desired to impede his effort to achieve his stated purpose of discovering whether he had been discriminated against. I find that Respondent thereby violated its obligation to deal fairly with Boring's request for information and thereby violated Section 8(b)(1)(A) of the Act. 32/

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[31] The only testimony of Gualtieri relating to his response to this letter came on examination by counsel for the charging parties when Gualtieri testified that he had received requests from individuals for copies of newsletters or specific information relating to the referral system. He testified that he gave them everything they requested except the newsletter because he could not send that to nonmembers. His further testimony makes clear, however, that all he furnished to those who sought information were copies of the Field Construction Agreement.

## IV. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

The complaint in this case alleges generally that Respondent discriminated in favor of applicants for employment who were members of Respondent and against applicants who were not members. It does not identify any alleged discriminatees. While the General Counsel introduced the available evidence as to order of referral and signing of the out-of-work list, the findings of discrimination are by and large based on general evidence of favoritism, with little evidence to establish specific acts of discrimination. 33/ The General Counsel contends that backpay should be ordered for all nonmember applicants to be computed using the formula set forth in the *Ironworkers* series of cases. 34/ In those cases the Board found discrimination against

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32/ *Laborers' International Union of North America, Local 252, AFL-CIO (Seattle and Tacoma Chapters of the Associated General Contractors of America, Inc.)*, 233 NLRB 1358; See also, *Local No. 324, International Union of Operating Engineers, AFL-CIO (Michigan Chapter, Associated General Contractors of America, Inc.)*, 226 NLRB 587.

33/ In his brief the General Counsel cites as specific acts of discrimination the refusal to refer Galen Boring in April at the hiring hall when he indicated that he had no union book, the failure to refer John Kunkle after he signed the out-of-work book in January, and the fact that the documentary evidence shows that dozens of members received multiple referrals without ever signing the out-of-work book while dozens of nonmembers received no referrals even though they signed the book more than once.

34/ See note 17, *supra*.

certain named applicants for employment as well as unnamed applicants similarly situated whose identities were to be determined during the compliance stages of the proceedings. While the Board made no findings as to their identities, all the evidence necessary to that determination was before it, and the method of identifying the additional discriminatees was established by the findings as to the named discriminatees.

Because of the complexity of any attempt to determine with any degree of certainty how much any individual applicant would have earned, the Board adopted a formula to determine the measure of earnings against which individual earnings of discriminatees were to be compared. Under that formula the total earnings for all those who worked within the Respondent's jurisdiction were to be determined and divided by the total number of those who worked out of the respondent's union hall. The resultant figure was deemed to represent the average earnings which any discriminatee would have earned absent discrimination against him.

The instant case presents a more formidable problem than that presented in the Ironworkers cases. Here not only is determination of a measure of earnings difficult, but there is also no identification of any discriminatees and no suggested method for determining which of those who signed the out-of-work list should be considered discriminatees and for what period. Some applicants, like John Kunkle, who were never referred, signed the out-of-work list only once, and his own testimony leaves in doubt the extent to which he was available for referral thereafter. While Galen Boring was denied referral for lack of a union book, this record does not establish whether or not others who signed the out-of-work list before the date of Boring's visit to the union hall should have been called and referred ahead of Galen Boring. Not all nonmembers who signed the out-of-work list indicated that they were qualified, and there is no evidence as to the continuing availability for employment of those who signed and were not referred.

In Local No. 851, International Longshoremen's Association, AFL-CIO (John H. Biggers, etc.), 194 NLRB 1027, the Board rejected a recommendation to make whole named discriminatees and all other applicants for employment. Despite finding that the respondent had a general policy of a refusal to grant classification cards to members of a certain local, the Board concluded that the record did not show that any members of the local other than the named discriminatees applied for classification cards and were denied them or were in any other manner discriminated against so as to cause them a loss of earnings. In these circumstances, the Board deemed it "inadvisable to extend our make-whole remedies to include losses of earnings to unknown individuals who were not named in the complaint and whose status as part of a group which was unlawfully deprived of work was not litigated during the course of the hearing." In other cases, the Board has found maintenance of discriminatory referral systems or operation of referral systems which generally breached a union's duty of fair representation without ordering backpay for any but named discriminatees, but it has not set forth a rationale for the omission or indicated that broader backpay was sought in those cases. 35/

On the other hand in International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 101 (Stearns-Roger Corporation), 206 NLRB 30, the Board found a general practice of discrimination against nonmembers as well as discrimination against a named discriminatee. There as here the union's records of referrals were neither accurate nor complete, and the number and identity of those harmed by the discriminatory practice could not be determined from them. Also there was no evidence as to the availability for employment of any but two of the nonmember applicants. Nonetheless the Board ordered that the named discriminatee and all nonmember applicants be made whole for any loss of earnings they may have suffered by reason of the discriminatory referral practice. It was left to the compliance stage of the proceeding to determine whether a nonmember applicant was available and qualified for referral on any particular date. 36/ In International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 433 (Associated General Contractors of California, Inc.), 228 NLRB 1420, the Board found that the union violated the Act by referring 76 applicants for employment out of turn and failing to dispatch 76 unnamed individuals who should have been dispatched. The Board ordered backpay, leaving it to be determined in the compliance stages of the proceeding which applicants would have filled the 76 jobs if contractual procedures had been followed. In so doing, the Board adopted the Decision of Administrative Law Judge Taplitz in which he stated:

> It may be that the General Counsel will be unable to identify which employees would have filled those jobs if the contractual hiring hall procedures had been followed. The General Counsel will have to show that those individuals were on the out-of-work list, were in the hiring hall when the job should have been announced, and met other criteria for proper dispatch as is set forth in the contract. However, I believe that the General Counsel should have the opportunity to attempt to do so in a backpay proceeding. A wrong cognizable under the Act has been established. Seventy-six individuals have been discriminated against. To the extent that

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35/ E.g. Pacific Maritime Association, 184 NLRB 312; enf'd 452 F. 2d 8 (C.A. 9); Local Union 99, International Brotherhood of Electrical Workers, AFL-CIO (Crawford Electric Construction Co.), 214 NLRB 723; Local 394, Laborers' International Union of North America, AFL-CIO (Building Contractors Association of New Jersey), 247 NLRB No. 5.

36/ See also International Longshoremen's and Warehousemen's Union, Local No. 13 (Pacific Maritime Association), 192 NLRB 260, 264, enf'd 549 F. 2d 1346 (C.A. 9).

> they have lost earnings and benefits because of that discrimination, they should be made whole. 37/

In enforcing the Board's Order, the Court of Appeals approved deferral of the identification of the discriminatees until the compliance stages of the proceeding, and rejected the notion that the difficulties the General Counsel might have in identifying discriminatees made an award of backpay any less appropriate. 38/

There is some appeal to the approach represented by the *Biggers* case, *supra*, and those which fail to order backpay for general violations. The complexity and uncertainty of determining who suffered a loss of earnings because of discrimination virtually guarantees a protracted compliance investigation and a massive expenditure of resources and manpower with little basis for predicting the extent to which any individual discriminatees will benefit. It can be argued that devotion of a fraction of the effort to insuring future compliance with nondiscriminatory hiring hall procedures will substantially remedy the proven violations, and that the deferral of identification of discriminatees to the compliance stages of the proceeding in effect bifurcates the unfair labor practice proceeding and defers determination of essential elements until after initial findings have been made.

Nonetheless, the decisions in *Stearns-Roger* and *Associated General Contractors of California*, *supra*, indicates that it is present Board policy that the effort must be made at whatever the cost in order to provide a complete remedy for the generally discriminatory system shown to exist and that such deferral is appropriate. While *Associated General Contractors of California* might be distinguished on the grounds that all incidents of discrimination were established, leaving much less uncertainty to be resolved in the compliance stages there than here, the reasoning adopted by the Board as well as the remedy ordered in *Stearns-Roger* make that distinction untenable. Accordingly, I shall recommend that Respondent be ordered to make whole all nonmember applicants for any loss of earnings they may have suffered as a result of discrimination against them, leaving the identity of those who should receive backpay to be determined in the compliance stages of the proceeding.

[illegible] remains as to whether any formula can be [illegible] to simplify the computation of backpay. The [illegible] that the formula utilized in the *Ironworkers* case [illegible]. While it is tempting to approve the use of such a formula [illegible] the compliance stages of the proceeding, there are

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37/ [illegible] NLRB [illegible]

38/ N.L.R.B. v. *Iron Workers, Local 433*, 600 F. 2d 770, 779 (C.A. 9).

differences between this case and those cases which make adoption of that formula at this stage of this proceeding unwise. There, although all instances of discrimination and the identity of all discriminatees were not found in the unfair labor practice proceeding, there were representative findings which provided a basis for developing a formula for backpay. Here, until there has been some determination of the identities and circumstances of those who are to receive backpay, it would be premature to indulge in speculation as to the measure of earnings which might compensate them. Indeed, instead of one common class of discriminatees as in the Ironworkers cases, there may be several classes of nonmembers for whom different approaches may be indicated depending upon qualifications, frequency of efforts to utilize Respondent's hiring hall, availability for employment, possession of cards in Respondent's racks, and other factors. I therefore decline to adopt the proposed formula at this stage of this proceeding, but as in the usual case find that determination of the measure of backpay should be left for the compliance stages of this proceeding.

Accordingly, I shall recommend that Respondent be ordered to make whole all nonmember applicants for any losses of earnings they may have suffered by reason of discrimination aginst them by Respondent commencing October 10, 1977, less net earnings, with interest to be computed in the manner provided in F.W. Woolworth Company, 90 NLRB 289, and Florida Steel Corporation, 231 NLRB 651. 39/

In the light of Respondent's general deviation from contractual referral procedures, its failure to apply consistent objective standards, its failure to maintain records of referrals, its refusal to furnish information to applicants upon request, I shall also recommend that Respondent be required to keep and retain for a period of 2 years permanent written records of its hiring hall operations, to make such records available to the Regional Director upon request, and to make such records available to nonmember applicants for purposes of inspection and copying at reasonable times and places. I shall further recommend that Respondent be required to submit to the Regional Director four quarterly reports concerning the referral of nonmember applicants.

Upon the basis of the above findings of fact and the entire record in this case, I make the following:

## Conclusions of Law

1. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

2. Western Pennsylvania Service Contractors Association, Boilermaker Employers Association of the Western Pennsylvania Area, and their member-employers are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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39/ See generally Isis Plumbing & Heating Co., 138 NLRB 716.

3. By discriminating against applicants for referral for employment under exclusive referral agreements because they are not members of Respondent or because of other arbitrary or invidious reasons Respondent has caused the employer-members of said Associations to discriminate against employees in violation of Section 8(a)(3) of the Act and has thereby engaged in unfair labor practices within the meaning of Sections 8(b)(1)(A) and (2) and 2(6) and (7) of the Act.

4. By conveying to an employee that access to the grievance procedure under Respondent's contracts with employers was restricted to Respondent's members, by refusing to accept his grievance, by denying nonmembers of Respondent an opportunity to sign Respondent's out-of-work book, by threatening to discriminate or discriminating in referrals against employees because they refused to sign checkoff authorizations and because they had filed charges against Respondent, and by refusing to furnish hiring hall information to an employee because he was not a member of Respondent and had filed charges, Respondent has restrained and coerced employees and engaged in unfair labor practices within the meaning of Sections 8(b)(1)(A) and 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: 40/

## ORDER

Respondent, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local Union No. 154, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause the employer-members of Western Pennsylvania Service Contractors Association and Boilermaker Employers Association of Western Pennsylvania Area or any other employer to discriminate against any employee in violation of Section 8(a)(3) of the National Labor Relations Act because of lack of membership in Local 154 or for other arbitrary or invidious reasons.

(b) Maintaining and operating its exclusive job referral system without the use of objective criteria or standards or in a discriminatory manner.

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40/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

The **Chairman**. Mr. Boring, you stated in your testimony that persons who failed to buy 50-50 raffle tickets were threatened with early layoff. The other witnesses have likewise testified for various positions around the country. Has anyone who failed to buy these tickets actually been laid off?

Mr. **Gary Boring**. Yes, sir, they have.

The **Chairman**. Could you name some?

Mr. **Gary Boring**. A Mr. French Gower.

The **Chairman**. Let me introduce Boring Exhibit No. 7, which is an FBI memo on the Gower interview.

[Boring Exhibit No. 7 follows:]

Boans Exhibit #7

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to
File No.

Pittsburgh, Pennsylvania

May 20, 1980

[illegible],
INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,
LOCAL 154, PITTSBURGH, PENNSYLVANIA;
LABOR MANAGEMENT REPORTING AND DISCLOSURE
ACT OF 1959

French E. Gover appeared at the Wheeling, West Virginia (WV), Resident Agency and stated, that subject is involved in the sale of fifty-fifty raffle tickets to members of Local #154 on an involuntary basis. Gover advised that each man, whether a member, traveler, or permit man within the union is required to buy five chances on a weekly basis on the fifty-fifty monthly drawing. Gover stated stewards on the various jobs in the district distribute the tickets to "runners" on the various job sites, and everyone is required to buy a ticket or their job is placed in jeopardy.

The fifty-fifty ticket is supposedly for the boiler makers' sick fund for the benefit of the sick members.

Gover concluded that he personally lost his job because he refused to purchase the fifty-fifty tickets. It is believed that subject is using the proceeds of the fifty-fifty monthly drawing for personal gain.

On May 14, 1980, Assistant U.S. Attorney (AUSA) Frederick W. Thieman, advised that based upon results of additional investigation in this matter, it should be determi the exact purpose of the fifty-fifty drawing, he will conside prosecution of Gualtiera for embezzlement of union assets under Title 18, U.S. Code, Section 501 (c).

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

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The **Chairman**. Did you ever feel constrained to purchase 50-50 tickets yourself?

Mr. **Gary Boring**. Up until 5 years ago, in this particular local, that was my feeling. I got fed up with being continually harrassed and pushed into doing this. The more questions we asked about what was going on, the more harassment and everything that we had to take. So I said flatly, "To hell with it. I am not, and I refuse to." I have, since that time, not bought any 50-50 tickets from anybody in the local.

The **Chairman**. Why have you not been laid off then?

Mr. **Gary Boring**. Senator, the only reason I could see is because of the NLRB case.

The **Chairman**. You expect, after that is resolved, to be given even more trouble?

Mr. **Gary Boring**. Yes, Senator, I do.

The **Chairman**. Have you been harassed during the last 5 years?

Mr. **Gary Boring**. Yes, Senator, as late as last week.

The **Chairman**. By whom?

Mr. **Gary Boring**. One incident occurred on this job that I am on right now, involving the union steward. I never spoke at that meeting that was called. I went to the company, informed them of what was happening, and the only thing I could say about that was, I did have 100 witnesses. There are approximately 100 men on that job. They heard the abuse. They not only attacked my rights. They literally trampled on everybody's rights who was there.

The **Chairman**. I understand just last Friday the union steward told the other workers not to talk to any of you Borings; is that right?

Mr. **Gary Boring**. Senator, that is correct. In some instances, the individuals were given union books if they did not talk. The only thing they had to do was to pledge allegiance to the agents and stay the hell away from these Borings.

The **Chairman**. Were there any acts of violence against you Borings as a result of the stand you took against the union raffle tickets?

Mr. **Gary Boring**. I had a brother, Vernon, whose house burnt down and his trailer burnt down. That is another investigation that has never been resolved.

The **Chairman**. Have you ever been threatened?

Mr. **Gary Boring**. Yes, sir.

The **Chairman**. Once, twice, or many times?

Mr. **Gary Boring**. Many times, on several different occasions, through different parties.

The **Chairman**. Who are they? Are they management people, are they union people, or who?

Mr. **Gary Boring**. It all depends on what position they were in at the time. They could also be union and management. That information was turned over to the FBI, and I believe it is in my files to the Labor Department, the Labor Board, and the other agencies.

The **Chairman**. Our staff, of course, has talked to three other welders on this incident last Friday, and a management representative, all of whom confirmed last Friday's incident that I brought up.

Let us go back to the 50-50 tickets. How many were you asked to purchase?

Mr. **Gary Boring**. On this one particular job, I was told that 50-50 tickets came right attached to the check, five at a time.

The **Chairman**. You were supposed to buy five a week, five $1 tickets per week?

Mr. **Gary Boring**. In some cases, yes; in other cases, five a month. Whenever the urge got to the people to bring them around.

The **Chairman**. Were regular members of Local 154, as opposed to transient members like yourself, expected to make $5 purchases of tickets?

Mr. **Gary Boring**. I would say yes.

The **Chairman**. Or were the transients expected to purchase more?

Mr. **Gary Boring**. In some cases, more.

The **Chairman**. How many men would be paying for these tickets, that you knew of?

Mr. **Gary Boring**. The only thing I could say there is a high point, say, between 1,700 and 3,000 men.

The **Chairman**. You are saying between 1,700 and 3,000 men a week would be buying these tickets, or at least during the month?

Mr. **Gary Boring**. At high points, yes, sir.

The **Chairman**. Is this fund maintained as an official union fund, the 50-50 raffle ticket fund?

Mr. **Gary Boring**. I do not know that, Senator.

The **Chairman**. Do you know if any accounting is made of those funds?

Mr. **Gary Boring**. I do not know that.

The **Chairman**. You have talked to a lot of men on the job, have you not?

Mr. **Gary Boring**. Yes, sir, I have.

The **Chairman**. What is the feeling of the men? Do they feel that this money really goes for the purposes that it is listed as going toward or represented as going toward?

Mr. **Gary Boring**. Nobody has an accounting of that, I do not believe, Senator. There are a lot of people who would like to ask questions about that and are scared to open their mouths.

The **Chairman**. Where do they think the money is going?

Mr. **Gary Boring**. For my part of it, that would only come out in an investigation when these individuals were talked to about their own feelings.

The **Chairman**. Where do you think the money is going?

Mr. **Gary Boring**. I think a lot of it disappears, Senator.

The **Chairman**. Do you think there is racketeering or corruption influence over these funds?

Mr. **Gary Boring**. I definitely do.

The **Chairman**. Have you chatted with other workers on the job? Do they feel the same way?

Mr. **Gary Boring**. Quite a few. Not only transient workers, what you would class as permit, they are even local men.

The **Chairman**. Have you ever won any money from the raffle?

Mr. **Gary Boring**. No, sir, I have not.

The **Chairman**. Do you know of anyone else who has?

Mr. Gary Boring. Only from what you see on the newsletters that the union sends out or on the tickets that these other people have bought. I, by the way, am not on the mailing list.

The Chairman. When you say you are not on the mailing list, what do you mean? Not on the union mailing list?

Mr. Gary Boring. Yes, sir.

The Chairman. Why is that? Are you not a dues paying member?

Mr. Gary Boring. Yes, sir, I am.

The Chairman. Why would you not be on the mailing list?

Mr. Gary Boring. That is what I hope this hearing will bring about an investigation to get into.

The Chairman. The other members of your family who are welders, are they on the mailing list?

Mr. Gary Boring. No, Senator. To the best of my knowledge, no.

The Chairman. Have they been harassed as you have?

Mr. Gary Boring. Yes, sir.

The Chairman. Do you know if this 50-50 raffle approach is audited by either the Labor Department, the National Labor Relations Board, or any other agency of Government?

Mr. Gary Boring. I do not know.

The Chairman. Are you aware that the 50-50 scheme is in many locals in the East?

Mr. Gary Boring. It is not only isolated to this one particular local; I would say all over the East.

The Chairman. Have you voted in union election?

Mr. Gary Boring. No. I am not permitted to vote at the local level at 154. I have filed charges with the Labor Department to bring about elections.

The Chairman. Why are you not permitted to vote there?

Mr. Gary Boring. Because of what I was explained to: a member in good standing and a member. There is a fine line that divides the two.

The Chairman. And they call you a member not in good standing?

Mr. Gary Boring. I am a member in good standing. However, I am not an actual member of local 154.

The Chairman. In other words, you are considered a transient then?

Mr. Gary Boring. I am allowed to work out of there, but I am not allowed to vote or participate in the majority of their affairs.

The Chairman. Where would you vote then? What would be the local where you would vote?

Mr. Gary Boring. Senator, just recently I voted in a delegate election for the NTD. That was the first time.

The Chairman. Was that in local 154?

Mr. Gary Boring. No, sir. That is in Kansas City, Kans. That is the National Transient Division.

The Chairman. In other words, you pay your dues to 154; right?

Mr. Gary Boring. I pay monthly dues to the international union, and I pay field dues when I am working out of local 154, plus a $6 per month service fee for using their facility.

The Chairman. And that is to 154.

Mr. Gary Boring. Yes, sir.

The **Chairman**. So, whenever you are working in that area, you are paying dues to local 154?

Mr. **Gary Boring**. Yes, sir, I am.

The **Chairman**. But you are not permitted to vote?

Mr. **Gary Boring**. No, sir, I am not.

The **Chairman**. Are you considered a member of 154?

Mr. **Gary Boring**. No, sir. I have been denied membership in local 154.

The **Chairman**. Why?

Mr. **Gary Boring**. Probably because I start too much trouble. I ask too many questions.

The **Chairman**. Are there other men in the same position you are who are allowed to be voting members of 154, men who work side by side with you but who are also transients?

Mr. **Gary Boring**. No, sir. They are excluded.

The **Chairman**. They are excluded also?

Mr. **Gary Boring**. Yes, sir.

The **Chairman**. Is there anywhere they can vote, except at the international level?

Mr. **Gary Boring**. In most cases, if you have a man on permit, he will never be allowed to vote.

The **Chairman**. I do not understand it. Why is that?

Mr. **Gary Boring**. Because you have this man there without any kind of union book at all. Without any kind of union book at all, this man has no right to vote in any labor organization.

The **Chairman**. But you have a union book; right?

Mr. **Gary Boring**. I have a union book. In some cases these individuals go out, they do not have any type of union book.

The **Chairman**. Where is your union book issued from?

Mr. **Gary Boring**. Kansas City, Kans.

The **Chairman**. Is that considered your local?

Mr. **Gary Boring**. Yes, but they consider it a transient local.

The **Chairman**. So you cannot vote there either?

Mr. **Gary Boring**. That is what the Labor Department case in Kansas City is about, Senator, to bring about elections and bring them into compliance with the Labor Management Reporting and Disclosure Act and the Landrum-Griffin Act.

The **Chairman**. In other words, transient workers are entitled to get jobs, but they are not entitled to vote in union elections, except as you have mentioned in some international elections?

Mr. **Gary Boring**. That is correct. They are not only not allowed to vote; they are not allowed to participate in the formulation of policies, contracts, or anything. There are other locals, other areas in the United States where the business agent is appointed. I believe this to be factual information. Where these business agents were actually appointed to take care of this assigned territory, and in fact these agents were never elected.

The **Chairman**. As I understand it, you pay field dues when you are working within local 154's jurisdiction at 2½ percent of your pay?

Mr. **Gary Boring**. Two-and-a-half percent of my gross, Senator.

The **Chairman**. Is there not a way you can elect to go into a transfer from Kansas City into the Pittsburgh local?

Mr. **Gary Boring.** We have challenged that case in Federal district court in Pittsburgh on the basis of what we had received through the mail, literature and so on. We directed that case through our attorney, through the court system, and ultimately it was dismissed because of—I believe if the entire transcript of that proceeding was gone over—on the word "automatic." There is no automatic transfer of membership, supposedly.

The **Chairman.** What is the reason you feel they keep you from voting?

Mr. **Gary Boring.** To keep the status quo of those in power.

The **Chairman.** As I understand it, local 154 has offered you membership if you will drop all your charges and quit making trouble; is that correct?

Mr. **Gary Boring.** That is correct, Senator.

The **Chairman.** Would that not be of an advantage to you?

Mr. **Gary Boring.** I have principles. I have children. I have the rest of my life to look myself in the mirror. I have given up a lot just to be here today.

The **Chairman.** I admire you for that.

Do other union workers in your trade feel the same way you do?

Mr. **Gary Boring.** A hell of a lot of them do. I would say the majority are fed up.

The **Chairman.** That is what we are finding out also.

Mr. **Gary Boring.** It is not only an isolated thing, as I heard earlier. I hear it from other crafts, and there is a definite need for something seriously to be done.

The **Chairman.** One final question, Mr. Boring. The Labor Department report of investigation on your charges cited an approach by an anonymous informant, who made allegations quite similar to yours about officials of local 154. I think it is important for us to ascertain whether this informant was working in conjunction with you, or whether he acted independently of you. Did any person with whom you associate or are even familiar with approach representatives of the Philadelphia strike force in 1979 or 1980 with allegations of this sort that you know of?

Mr. **Gary Boring.** No, sir.

## STATEMENT OF WAYNE BORING, A WELDER FROM INDIANA, PA.

The **Chairman.** Mr. Boring, how long have you been in the welding business?

Mr. **Wayne Boring.** About 18 years, sir.

The **Chairman.** Approximately since 1964?

Mr. **Wayne Boring.** Yes, sir.

The **Chairman.** You stated in your letter to the staff that you have been threatened with retaliation because of your filings with the NLRB against local 154. Have these threats ever been carried out?

Mr. **Wayne Boring.** Yes. One particular time, Gary and I were sent on a stack 800 to 850 feet in the air. I believe that is in the NLRB proceedings. There have been other instances, where I have been skipped over on the out-of-work lists. There are people working right now, I know I was ahead of them on the list, yet I have been skipped over. This is mostly because I filed charges with the NLRB.

The CHAIRMAN. Are you presently working right now?

Mr. WAYNE BORING. No, I am not.

The CHAIRMAN. How long have you been laid off?

Mr. WAYNE BORING. Since the last of February.

The CHAIRMAN. Are there a lot of jobs available?

Mr. WAYNE BORING. Yes. There is a job 3 miles from my house.

The CHAIRMAN. Are you a qualified welder?

Mr. WAYNE BORING. Yes.

The CHAIRMAN. And you can pass these tests any time they come up?

Mr. WAYNE BORING. Yes.

The CHAIRMAN. In other words, what we are finding out here today is that there are unqualified welders working on nuclear powerplants and other very important construction jobs, while you, a qualified welder, are being passed over.

Mr. WAYNE BORING. I know for certain there are people on this job 3 miles from my house that are receiving journeymen's pay and they are not journeymen, as required by the union. They are supposed to have 8,000 hours. Yet they have been referred out there by the union hall. They do not have the necessary 8,000 hours, but at the same time they have been passed off as journeymen, and they are getting paid journeymen's rates of pay.

The CHAIRMAN. Are they transients also, or are they regular members of the local?

Mr. WAYNE BORING. No. They are permit men, some of them, and some of them are transients. They are not local members.

The CHAIRMAN. Is it not true that by law you are entitled to equality on these kinds of referrals?

Mr. WAYNE BORING. That is the way I understand it. We are waiting on a final disposition in the NLRB case.

The CHAIRMAN. When you do get work, how do your assignments compare with those of the other members of local 154?

Mr. WAYNE BORING. We get the worst jobs. The 154 men are ordinary for storage jobs, tool room jobs.

The CHAIRMAN. You mentioned that you and Gary were sent to the high rigging of a stack that was 800 to 850 feet high. As I understand it, that is documented right in the NLRB report on page 32, in our exhibit No. 6. So you generally handled what was described earlier as the dirty jobs, the overhead jobs and the harder jobs to do.

Mr. WAYNE BORING. Yes, like the other two.

The CHAIRMAN. You state in the letter to the staff that Mr. Fred Gualtieri, business manager of local 154, "has refused to work people because they had no union book of any kind. He then set these people up so they could buy a union book of some kind from another local." Is that correct?

Mr. WAYNE BORING. Yes.

The CHAIRMAN. What basis do you have for making that statement?

Mr. WAYNE BORING. I talked to three or four people who told me this. I believe it did happen, and I have documentation of at least one case.

The CHAIRMAN. But you are saying that three or four people told you they had purchased their books that way?

Mr. WAYNE BORING. Yes.

The CHAIRMAN. Is it common knowledge around the local that this is what goes on?

Mr. WAYNE BORING. Yes, this is common knowledge. It happens quite often.

The CHAIRMAN. As I understand it, you told our investigators about 20 or 30 people that you know of said that they had to go out of town to get their books, and then have to come back in order to work for Gualtieri.

Mr. WAYNE BORING. Yes. They were refused admission to the local union in Pittsburgh, and the majority of them were told, "You have to have some kind of a union book before I can work you." At that point in time, it is like Gary was describing, that opens up this vast array of salesmen and middlemen selling these union books.

The CHAIRMAN. As I understand it, you supplied their names to the Labor Department representatives on the Philadelphia strike force on organized crime; is that correct?

Mr. WAYNE BORING. Yes.

The CHAIRMAN. You state in the letter that you have provided information about illegal practices to the FBI, the Organized Crime Strike Force, and the U.S. attorney's office. When was the last time you discussed this case with any of these agencies?

Mr. WAYNE BORING. 1979 and 1980. The FBI, I believe, was 1979, and the other two agencies were in 1980.

The CHAIRMAN. This case was referred to the FBI by the Labor Department on November 28, 1980. Have you had any discussions with the FBI since the time of this referral?

Mr. WAYNE BORING. No. None whatsoever.

The CHAIRMAN. They have not even contacted you?

Mr. WAYNE BORING. No.

The CHAIRMAN. When did you take this case to the U.S. attorney's office in Pittsburgh?

Mr. WAYNE BORING. 1978 and 1979, during that period of time. We gave a vast amount of information to Tom Crawford, who was then assistant U.S. attorney.

The CHAIRMAN. He was an assistant U.S. attorney?

Mr. WAYNE BORING. Yes, he was.

The CHAIRMAN. As I understand it, your last contact with that office was on January 23, 1980, when you both went in to see the then U.S. attorney, Robert Cindrich.

Mr. WAYNE BORING. Robert Cindrich, sir.

The CHAIRMAN. What did Mr. Cindrich tell you?

Mr. WAYNE BORING. Basically he told us that he was the one running that place, and he will decide who is going to be prosecuted. He said, "I have your whole goddam file here right in front of me," and he sort of pushed papers at us. It was only four or five sheets of paper. I knew then that was not our file.

The CHAIRMAN. in other words, he was just throwing four or five sheets of paper that had nothing to do with your file?

Mr. WAYNE BORING. It was not nearly the amount of information that I had given Tom Crawford, his assistant.

**The Chairman.** Let me ask your brother, Gary, if that is your recollection of that meeting also. You described it before but not quite as graphically.

**Mr. Gary Boring.** When we went into Mr. Cindrich's office, we were at this point—and I hope this is understood—depressed because of running back and forth, trying to see what investigation was where in the different Federal agencies. At that time, quite frankly, Senator, I was dumbfounded as to what to do next. When I looked at my brother, Wayne, he looked back, and I just thought to myself, "Let's get out of here. There is something wrong. He does not have the information or he is keeping it from us. Let's go."

**The Chairman.** That is your recollection as well?

**Mr. Wayne Boring.** Yes, sir.

**The Chairman.** As I understand it, the files that you had given to Mr. Crawford, who was then assistant U.S. attorney, Mr. Crawford had turned them over to Mr. Riedley at the Philadelphia strike force; is that not correct?

**Mr. Wayne Boring.** Yes. I found out later on that these files and records, the written files and records we gave him, plus different statements we had given him in his office, were turned over to Roger Riedley in the Organized Crime Strike Force.

**The Chairman.** So the four or five pages he threw at you could not have had any relationship to the file anyway?

**Mr. Wayne Boring.** I could not see anything where he would have a basis for a decision.

**The Chairman.** Did Mr. Cindrich, to your knowledge, ever make any effort to obtain these files?

**Mr. Wayne Boring.** No, not to my knowledge.

**The Chairman.** You and your brother informed the Nuclear Regulatory Commission about allegedly fraudulent welding tests. Have you personally ever taken welding tests for anyone else?

**Mr. Wayne Boring.** Yes, I have.

**The Chairman.** On how many occasions?

**Mr. Wayne Boring.** On two ocasions.

**The Chairman.** Would you describe those for us?

**Mr. Wayne Boring.** I took a welding test down in Trenton, N. J., at what they call the Duck Island Power Plant. I took my own test, and when the guy looked at it—the heliarc pass; that is the first pass you put in the tube—he looked at it and said, "How about running four or five more of those our for me?" He said, "You know why I want them?" I said, "Yes." So I ran those tests out.

Then again last fall, down at Keystone Power Plant, in Pennsylvania, there was a young guy having a hard time with the tests. The official or whatever in charge of the test booth there told me to go ahead and give him a hand. What he had done, he had blown part of the tube apart. The metal just fell out, as in a gap. I patched that up for him. He welded the rest of it up, and he failed anyhow. To my understanding, this same person took two or three tests there, and he failed them all.

**The Chairman.** Then you passed it for him?

**Mr. Wayne Boring.** The one I patched up for him, he took two or three besides that, and he failed all of them. Then he was laid off, fired, or whatever. But he was sent back out by the union hall on the third shift, and my brother, Gary, was on the third shift, and this kid supposedly passed this welding test there.

The CHAIRMAN. You stated in your letter to the committee staff that a boilermaker at the Shippingport Nuclear Plant was asked to do electrical wiring, which would seem to be out of his area of expertise. How do you know that this actually took place.

Mr. WAYNE BORING. A man came to me and told me this.

The CHAIRMAN. What was his name?

Mr. WAYNE BORING. French Gower.

The CHAIRMAN. You suggested in your letter to the committee that large supplies of material were being stolen at plantsites and charged off to the consumer. Could you provide us with an example of such a theft?

Mr. WAYNE BORING. Yes,. sir. In late 1975 or early 1976, the superintendent on a job I was working on, Homer City powerplant, wanted a load of this aluminum siding lagging to build a airport. I took it out the gate for him in a pickup truck, and later on he picked it up.

The CHAIRMAN. What did he use it for?

Mr. WAYNE BORING. Supposedly it was to be used to build an airport hangar at his home in Ohio. This guy had his own airplane.

The CHAIRMAN. So it was or his own personal use?

Mr. WAYNE BORING. Yes.

The CHAIRMAN. So you actually did follow the instructions, picked up the materials, and delivered them out there?

Mr. WAYNE BORING. Yes, sir. I stole it.

The CHAIRMAN. Did you do any other favors of this kind for him?

Mr. WAYNE BORING. Yes. While we were on the job, my other brother, Vernon, and I and one of two other guys, we built stainless steel cabinets that he could store his oil and his tools and equipment in for his airplane. We built two or three of these.

The CHAIRMAN. Did this material also belong to the company?

Mr. WAYNE BORING. It belonged to the powerplant, yes.

The CHAIRMAN. Did you fabricate these cabinets on company time?

Mr. WAYNE BORING. Yes, we did.

The CHAIRMAN. Why were you willing to do all this?

Mr. WAYNE BORING. The thing then was, you either went along or you did not work. You have to go along with the program, or you are not allowed to work. They are going to find some reason to lay you off. They are not going to lay you off because you will not steal for them; they will lay you off for some other reason. You still know where it is coming from.

The CHAIRMAN. Are these plants featherbedded, in your opinion?

Mr. WAYNE BORING. Yes, I think they are.

The CHAIRMAN. Do you have figures on the steward——

Mr. WAYNE BORING. Stewards go out on the job, and they do absolutely no work for the employer. Usually these jobs are broken into crew sizes of maybe 10 men or something. These stewards are not in a crew; they are just by themselves. Contract-wise, they are supposed to be a working journeyman, but I have only seen one who ever worked and that was because it was a small job. There were very few men there.

The CHAIRMAN. Let me clarify one thing. We understand that apprentices or those without the necessary skills or work experience hours are supposed to be paid 75 percent of scale. Is that correct?

Mr. WAYNE BORING. Yes, 70 percent, I believe.

The CHAIRMAN. If a man was told to go to one of those book-selling locals, could he come back and receive full scale, regardless of his actual skill or experience level?

Mr. WAYNE BORING. If a guy was on an apprentice program or a trainee, and he would leave here, he would be getting 70 percent on that basis. He could leave here and go buy a union book from one of these other locals, come back, and he would be getting full scale. Just the difference of buying the book qualifies him.

The CHAIRMAN. You have the same attitude about the 50-50 raffle tickets as your brother?

Mr. WAYNE BORING. Yes, I do.

The CHAIRMAN. Did you quit buying them, too?

Mr. WAYNE BORING. I quit in January 1977.

The CHAIRMAN. You have not bought one since?

Mr. WAYNE BORING. No.

The CHAIRMAN. What happened to you after that?

Mr. WAYNE BORING. We have been harassed over it.

The CHAIRMAN. Were you threatened?

Mr. WAYNE BORING. Yes. The business manager made some remarks to us about it, the business manager of 154.

The CHAIRMAN. Did they threaten to lay you off?

Mr. WAYNE BORING. No, not specifically for that, but my work status has been steadily deteriorating.

The CHAIRMAN. Do you feel like these other witnesses, that these moneys do not always go for the intended purposes or the purposes they are represented for?

Mr. WAYNE BORING. No, I do not believe they do. I think some of the money goes into health and welfare, but I do not believe the full amount does.

The CHAIRMAN. Who do you think gets the rest of the money?

Mr. WAYNE BORING. It is hard to say who is getting it. I guess those who have the power over it see where it is distributed.

The CHAIRMAN. This is a tough question, and you may not know the answer, but I want you to give me the general feeling of the workers that you have worked with.

Mr. WAYNE BORING. I feel that maybe the union officials, or Weaver & Grose Associates might be doing something with it.

The CHAIRMAN. Who are Weaver & Grose Associates?

Mr. WAYNE BORING. They handle most of the union's funds.

The CHAIRMAN. Are they accountants, or what are they?

Mr. WAYNE BORING. They are administrators.

The CHAIRMAN. I take it then, they would have some record of these raffle ticket sales.

Mr. WAYNE BORING. They should, because it is my understanding now that if you would win, you go to Weaver & Grose to pick your money up, and you pay your income tax there.

The CHAIRMAN. Some of our witnesses this morning have indicated that there may be some mobster or racketeering or underworld influence in not only the purchase of these books at exhorbitant rates but also in some of these raffle ticket sales.

Mr. **Wayne Boring**. Yes. We gave this information to the investigators.

The **Chairman**. Do you believe this to be the case?

Mr. **Wayne Boring**. Well, yes. Portions of it that I thought were going that way, this is what I turned over to the strike force.

The **Chairman**. So that anything you know about it, you have given to the strike force?

Mr. **Wayne Boring**. Yes.

Mr. **Gary Boring**. Senator, I would like to add something. Using this job at Huff as an example, there have been men sent to this job—and I believe this can be confirmed through the supervisors there—that were given welding tests sometimes two and three times to try and qualify them. Now, whether it be on a nuclear site or whether it be in a coal generator or what, in a chemical plant, if an individual cannot pass that test under ideal conditions in a test booth, then that individual, sir, in my estimation, could not go on the job and do the work where the work is actually located, where you are away from all those exact niceties of the test booth.

Another point is that you have time and materials for the cost of these tests, the cost to the company, to the consumers, and so on down the line. How much these tests cost to be given in man-hours, how much is paid out for each of these tests falls back to the consumer, my mother and dad, and the rest of them too.

The **Chairman**. I take it, Mr. Boring, you, like your brother, are in the transient category?

Mr. **Wayne Boring**. Yes.

The **Chairman**. So you are not voting at any local either?

Mr. **Wayne Boring**. No. The only time we have ever had a vote was this one time voting for delegates, but that was only because we had been to the MLSA and filed this suit in Kansas City.

The **Chairman**. I have had some indications that some of the men who work out of local 154 are afraid about the voting situation. Is there any truth to that?

Mr. **Wayne Boring**. Yes.

The **Chairman**. Tell me about that. What does that mean?

Mr. **Wayne Boring**. If we were in that local and several other people were in the same position as we are, if we were permitted to be in that local, those that are in power now, I doubt if they would be there.

The **Chairman**. In other words, you would throw them out?

Mr. **Wayne Boring**. I think they would be voted out, yes, sir.

The **Chairman**. If the men were able to vote. Are they able to vote there?

Mr. **Wayne Boring**. The members he takes in, but they are carefully elected.

The **Chairman**. Carefully monitored.

Mr. **Wayne Boring**. They have been told, "I want loyalty. Stay away from the goddam Borings." They are taken in under those circumstances.

The **Chairman**. So you fellows would certainly be what you would call dissidents to this particular local?

Mr. **Wayne Boring**, Yes, to this particular local.

The **Chairman**. Are you alone, or are there other people who feel that way?

Mr. **Wayne Boring**. There are other people like us, but they just have not come forward.

The **Chairman**. You feel there are people who are intimidated in that local?

Mr. **Wayne Boring**. Yes. I feel they will not come here and talk, but they will talk to the appropriate agency.

The **Chairman**. I might mention that our staff has interviewed a number of individuals and they confirm what you are saying: They do not want to come forward, because they are afraid to.

Mr. **Wayne Boring**. Yes.

Mr. **Gary Boring**. Senator, as far as our own position, the National Labor Relations Board has talked—and we have been told this by Board members—in excess of 1,000 individuals concerning the charges that we have filed before the Board. There is nobody yet—and I believe this was confirmed in the hearings—nobody has said anything wrong about our work. In a lot of cases, this has happened to a lot of other individuals across the United States. Even though their work is quality work, and people go in and do a job, these people are still subject to layoffs and a lot of abuses. This is nationwide.

The **Chairman**. Is it just local 154 or is it other locals as well, where they are monitoring and keeping the votes so that the local union leadership stays firm.

Mr. **Wayne Boring**. I would say it is in all locals throughout the country.

The **Chairman**. You guys are tough guys. I used to work in the labor unions in Pittsburgh myself for 10 years. You are tough fellows. We have had three others come in here today, and they want their identities concealed because they are afraid to have them disclosed for fear of reprisals against themselves and their company.

Mr. **Gary Boring**. Not "tough," Senator, "fed up." We are fed up with what is going on, what we hear on the jobs, and that can be confirmed through other testimony.

The **Chairman**. I appreciate your coming in. We are going to try and get to the bottom of this for you, and we are also going to see what happens in your case. If you have seniority, and you have the capacities and the skills, you ought to be working on these jobs. You ought to be working, especially on these nuclear powerplants, instead of some of these duds who do not know what they are doing.

Mr. **Wayne Boring**. Our union contracts have no seniority clause in them, but I still feel I should be sent out according to the referral list. I was on the referral list; I was given a number by the local union on the list. Yet I have statements I could produce from other people, where they have given me a written statement that all they did was ask for a job and they got one immediately. They were never on the referral list. For me, I have to be registered on the referral list and renew my registration at least every 2 weeks.

The **Chairman**. The staff has interviewed a number of people who confirmed that this is somewhat widespread, and that this happens not only in 154 but in other locals. I might mention, we have had complaints from individuals in other crafts as well and other trade unions, making the same allegations.

My attitude is this. I was raised in the trade union movement. I worked in the building construction trade union for 10 years, in Pittsburgh. Frankly, I am for you men. I am sick and tried of the way some of these things go on. But what really incenses me, what has me mad is, I wonder what the Justice Department, the U.S. attorney's office there, the Labor Department and, I might add, the FBI within the Justice Department are doing about this. I am pretty upset about it that you make these kinds of allegations, rightly or wrongly. They ought to be as interested in disproving these allegations as they are in proving them. One way of the other, they should certainly investigate this and get to the bottom of it and find out what in the world is wrong here.

Mr. **Gary Boring**. It would clear the air to have the investigation go one way or the other. The allegations that were made stand. The allegations that were made by myself, my brother, my other brother, the people at the board, so on and so forth, who testified and gave statements to different people—I believe a lot of abuses in this country could be cleared up if they are simply looked at, and an investigation is conducted, and get rid of the corruption from stopping these investigations.

The **Chairman**. Let me just say this to you. From what you fellows are telling me, if what you are saying is true, then union members, particularly in your craft or skilled trade, all over this country are being intimidated and pushed around in an improper manner under our present labor laws, by union leaders and by others who may even be management people who are cooperating with them and possibly even by underworld influences in the union.

Mr. **Wayne Boring**. Yes.

Mr. **Gary Boring**. Correct.

The **Chairman**. That is where we are going to at least start to go into this on next Thursday, when we continue these hearings.

We have invited Mr. Gualtieri to testify from local 154. I would imagine, after these allegations, that he would certainly want to be here to testify and deny these.

Mr. **Wayne Boring**. When he has time to go over these statements or anything that happened here today, perhaps he will decide.

The **Chairman**. I think it is incumbent upon him to be here.

Mr. **Wayne Boring**. He is present here today, sir.

The **Chairman**. Is he? If he wants to testify, we will make him witness No. 1, probably, on Thursday.

Then we will go to Roger E. Riedley and Melvin Gudknecht, special agents of the organized crime and racketeering strike force in the Inspector General's Office, Department of Labor, Philadelphia Region. We will go to Stewart Eder, who is the coordinator of the organized crime and racketeering program in the IG Office, Department of Labor, here in Washington; Mr. Fletcher, the Chief Postal inspector here in Washington; and we are hopeful we will have a representative from the Justice Department as well.

If what you are telling us is true, I admire both of you greatly and the other witnesses who have testified here today as well. It is just a shame that any one committee can only go into a certain number of things. We have to rely on these agencies of Government to solve these problems as they arise.

But if you recieve any more harassment or any more difficulties, in any way, shape, or form, I want this committee to hear about it immediately. This committee has not been an easy one for you or for anyone else, but we are going to try to get to the bottom of it and see just whether or not your allegations are correct. But we have not only had yours; we have had three other people who have testified, and they generally have confirmed what you are saying on a nationwide basis, or at least east of the Mississippi, and I am concerned about that.

With that, we will recess these hearings until next Thursday, when we will continue.

[Whereupon, at 12:21 p.m., the committee recessed, to reconvene on Thursday, May 13, 1982.]

# OVERSIGHT OF DEPARTMENT OF LABOR'S INVESTIGATION OF ORGANIZED CRIME INVOLVING UNION WORKERS

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## THURSDAY, MAY 13, 1982

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
*Washington, D.C.*

The committee met, pursuant to recess, at 9:32 a.m., in room 4232, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman of the committee) presiding.

Present: Senator Hatch.

### OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. For some months now the Senate Labor Committee, at my instruction, has been conducting a specific, wide-ranging review of how the Labor Department investigates allegations of abuses by organized crime in America's labor unions. We have found a serious situation that is a significant cause for concern to every single citizen of our country, and I might add this is only one of a number that we are looking into.

Organized crime and related questionable elements have burrowed deeply into the structure of a number of unions, gaining operating control of numerous pension and welfare funds. Violence and threats of violence are not uncommon when union members protest abuses that range from compulsory fund contributions to discrimination in work assignments.

Many rank and file members protest these situations to their national unions and to agencies of the Federal Government. Thus far, the response has been shamefully lacking. Over a period of years little has been done, and these people have lost faith in the Government's ability to redress their grievances.

The committee has delved into the Labor Department in a very comprehensive manner, requiring access to documents and case materials, gaining it only after using the subpena power of the committee as a last resort or at least threatening to use it. We have ordered a series of GAO investigations that even now are being resisted by the Office of the Solicitor, prompting growing concern on my part over why formal, duly constituted probes are obstructed so often and so consistently. We have looked into the backlog of cases at the Labor Department Solicitor's Office, finding delay and unwillingness by that Office to hold certain elements in the labor movement to a standard of accountability for their actions and stewardship.

However, the worst problem really does seem to be at the Justice Department, which has compiled a sad record of ineptness and inaction in the face of so many accusations and referred cases, and has vehemently resisted all efforts by this committee to find out why cases are so badly handled, dropped, delayed, and otherwise not addressed properly.

When we sought access to the files the Justice employees who handled the *Morris Shenker/Culinary Workers* case in southern Nevada, in essence we were stonewalled by Justice. This involved the looting of a pension fund owned by 30,000 hourly workers by Jimmy Hoffa's old counsel, who bought a gambling casino with the borrowed funds and has not yet paid the money back.

Justice has done nothing and refuses to appear before this committee to answer questions. Jack Keeney, of Justice, the complete bureaucrat, refuses to provide appropriate witnesses to the committee despite repeated formal requests. Shenker laughs at the Government, and the culinary workers have lost their money for now.

When we come to today's situation allegations have been made that the Boilermakers' Union in Pittsburgh has been associated with an under-the-table traffic in welder's certification documents. This, in turn, may have led to unqualified welders working on nuclear plants around the Nation, so it is a nationwide problem, if anything.

This entire situation was made known long ago to Labor and Justice. The committee, in discharging its jurisdictional responsibilities, is asking the essential questions. We had to threaten use of a subpena to receive even one short FBI report from the closed case file in this affair. Now the committee has asked the Justice Department for a witness to appear to explain why no action was taken despite the ongoing flood of complaints from union members. Again the committee has been stonewalled by Justice.

I do not know why this policy is being followed. Perhaps there is another reason as yet unknown to me. Such an explanation would be welcome to this committee chairman. So would an explanation about other acts of refusal to cooperate with this committee by Justice, as in the case of the Masselli tapes. In that situation, lawyers for accused gangsters received unlimited access to wiretap transcripts and the tapes that are now being refused to this committee.

The committee is determined to get to the bottom of this entire business. We are resuming our hearings today into the Boilermakers' situation. We will be calling representatives of the Labor Department before us to explain why the inquiry was handled or mishandled as it was. We will also be hearing from the former assistant U.S. attorney in Pittsburgh, and a witness from the U.S. Postal Inspection Service. The representative from the Postal Inspector's office, Mr. Thomas Johnson, will testify about a successful prosecution his agency recently made on charges related to the ones we heard about the witnesses that testified on Tuesday regarding illegal sales of Boilermaker Union books.

We had invited another witness here today, Mr. Fred Gualtieri, the business agent of local 154 of the Boilermakers' Union in Pittsburgh. However, we have just learned that Mr. Gualtieri has declined our invitation. His attorney states that Mr. Gualtieri wants to study the full record of this hearing, including today's testimony, and submit a written statement for the record at a later date.

We will be happy to accommodate Mr. Gualtieri in this manner. I would hope that that statement will be in within 2 weeks from this date. However, there is a distinct possibility that in addition the committee may want to require Mr. Gualtieri's presence at a subsequent hearing where we may call various officials of the Department of Justice to account for their actions in this case.

I might mention that I failed to swear in the Boring brothers the other day, so before we hear from our first witness I will receive for the committee the affidavits of Wayne and Gary Boring that the statements they made before the committee on Tuesday, May 11, are "true and correct to the best of their information, knowledge, and belief under penalty or perjury." We had, as I mentioned, inadvertently failed to swear them in at our hearings on Tuesday, so without objection, these affidavits will be received by the committee.

[The material referred to was submitted to the committee.]

The CHAIRMAN. Our first witnesses today are Messrs. Roger Riedley and Melvin Gudnecht, special agents in the Labor Department's Office of Organized Crime and Racketeering in Philadelphia, Pa. If we could have those agents, I would appreciate it.

Gentlemen, if you will raise your right hands, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RIEDLEY. I do.

Mr. GUDNECHT. I do.

The CHAIRMAN. Thank you so much.

We are happy to have you here before the committee. I need to explain that I have to go to the White House about 9:50 p.m. and will be gone for about 45 minutes, and will be meeting down there with various White House officials on other committee business. Therefore, we will have to recess for a short period of time until I can get back but we will start and see how far we can go before I leave.

Now, gentlemen, would you identify yourselves and tell us which one of you will be the spokesperson here this morning?

## STATEMENT OF ROGER E. RIEDLEY, SPECIAL AGENT, ORGANIZED CRIME AND RACKETEERING STRIKE FORCE, IG OFFICE, DEPARTMENT OF LABOR, PHILADELPHIA REGION, ACCOMPANIED BY MELVIN GUDNECHT, SPECIAL AGENT

Mr. RIEDLEY. My name is Roger Riedley. I am a special agent with the U. S. Department of Labor, Office of the Inspector General, and I am with the Organized Crime and Racketeering Section. We are supporting the Organized Crime Strike Force in Philadelphia.

The CHAIRMAN. You are special agents, then, with the Organized Crime Strike Force?

Mr. RIEDLEY. That is correct.

The CHAIRMAN. OK. You are——

Mr. GUDNECHT. I am Special Agent Melvin Gudnecht of the same office. We will be responding to the questions together.

The CHAIRMAN. Now this is a Justice Department strike force in which you are both representatives of the Organized Crime and Racketeering Section of the Labor Department Inspector General's Office. Is that correct?

Mr. GUDNECHT. Yes, sir.

The CHAIRMAN. How did you become involved in the Boilermaker case in Pittsburgh?

Mr. GUDNECHT. In approximately October 1979, we received a call from the Labor Management Service Administration in Pittsburgh, Pa., informing us that they had a confidential informant who was going to supply information and to work in a capacity as an operative for our office.

The CHAIRMAN. As I understand it, this informant told you that a national transit mechanic's membership in the boilermakers could be purchased in Montreal, Canada through a nationally powerful Boilermaker Union official in Pittsburgh for a price far in excess of that stated in the bylaws and constitution of the Boilermakers' Montreal lodge. Is that correct?

Mr. GUDNECHT. Yes, sir, that is correct.

The CHAIRMAN. Now I understand that the Philadelphia Strike Force covers Pittsburgh as well, does it not?

Mr. GUDNECHT. I do not believe so.

Mr. RIEDLEY. Just recently, as late as June 1981, it is my understanding by speaking with the strike force chief in Philadelphia that he did not have jurisdiction in Pittsburgh. He may have had some jurisdiction prior to June 1980 but that seemed to be clouded.

The CHAIRMAN. OK. Mr. Riedley, did you determine that the alleged card purchases could be in violation of U.S. law?

Mr. RIEDLEY. Yes, we consider that it could be in violation of embezzlement statutes if the purchase of the book, the actual purchase price of the book or union membership was in excess of that which was quoted in the lodge's or the individual union's bylaws.

The CHAIRMAN. I suppose you presumed if it was in excess or the purchase of any of these books were in excess, then that would be not only embezzlement but there were probably kickbacks that would also lead one to the conclusion of embezzlement with regard to those transactions?

Mr. RIEDLEY. Yes, I think the theory that we go on is that the union membership or the union book is an asset of that union, and it has a true intrinsic value, even though it may be stated, that is apparently worth more than it is stated in the bylaws. Those excess funds, if they were put into the union then we could not have an embezzlement charge but when that money that is paid for the book in excess does not go into the union, then there is the possibility of embezzlement.

The CHAIRMAN. When did you interview the confidential informant?

Mr. GUDNECHT. We interviewed the confidential informant on October 3, 1979.

The CHAIRMAN. Did you also not interview him on on November 16, 1979, as well?

Mr. RIEDLEY. Yes, sir.

The CHAIRMAN. Now would you elaborate on what he told you about these illegal purchases of Boilermakers' certificates in Montreal? First of all, did you consider the informant a reasonable informant?

Mr. GUDNECHT. Yes, sir. We contacted the Bureau of Alcohol, Tobacco, and Firearms and determined that the man was credible in what he was telling us and that he could go in an undercover capacity wearing electronic surveillance equipment and make that purchase.

The CHAIRMAN. All right. Let me put the Riedley Exhibits 1 and 2 into the record at this point.

[Riedley Exhibits 1 and 2 referred to follows:]

Riedley Exhibit #1

| U.S. DEPARTMENT OF LABOR<br>Office of the Secretary<br>Office of Inspector General | REPORT OF INTERVIEW |
|---|---|

Date of Interview October 3, 1979

An individual, who wishes to remain confidential, was interviewed on the above date by the undersigned who identified themselves as Special Agents of the Office of the Inspector General, Department of Labor.

The individual stated that he possessed valuable information concerning the Boilermakers Local Union located in Pittsburgh, Pa. He further stated that he wished to be associated with the Department of Labor as an operative at which time he would put the plan outlined below into operation.

The informant stated that is an official of the Boilermakers Local Union in the Pittsburgh area who exerts a sitnificant amount of control over the local union. is believed to be associated with numerous corrupt politicians and organized crime figures in the Pittsburgh area.

The informant believes that it is possible for him to gain membership in the Boilermakers union by purchasing a "National Transit Mechanics Book" (NTM).

The informant stated that he will contact a personal friend of his by the name of , Pennsylvania. is a boilermaker and has been known in the past to assist in the purchase of union membership in the Boilermakers. is not to be exposed during this operation.) is a friend of and will arrange for the informant to approach Gaultier regarding the purchase of the NTM Book.

It is the informant's belief that will charge him approximately $1,000 for the name of an individual located in Montreal, Canada, who will sell the NTM Book to him. The informant believes the actual purchase of the NTM Book will be in the area of $2,000.

The NTM Book will enable its holder to be employed throughout the United States and Canada as a boilermaker. The current wage of a boilermaker is $12.75 per hour. A boilermaker has the potential to earn $30,000 to $60,000 per year. The holder of an NTM Book is considered a bona fide member of the Boilermakers.

By Roger E. Riedley, Special Agent
Melvin R. Gudknecht, Special Agent

At Philadelphia, Pennsylvania

Date Dictated 10/4/79

Date Transcribed 10/24/79

File No. 31-0-0018

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OIG 103 (11/78)

The informant feels after he purchased the NTM Book in Canada he could trade the NTM Book for a book of the Local Boilermakers in Pittsburgh - this trade would again involve and would most likely involve another payment to ensure the receipt of the Pittsburgh local book. The informant does not know what would do with the NTM Book once he would secure it from the informant. He believes there is the possibility would resell the NTM Book.

The informant states that it would be impossible for an individual to purchase an NTM Book without the proper connections. He feels that because of his prior criminal record and his being close friends with will enable him to pursue the above plan.

The informant believes this operation would enable him to infiltrate and expose 's operation. He also believes the operation would expose numerous politicians and organized crime figures Gaultier is supposedly associated with specifically in the Pittsburgh area and generally throughout the United States and Canada, and subject them to possible criminal prosecution.

The informant feels that once is exposed and prosecution appears possible that he will "explode like the dropping of a ripe melon; thus exposing his associates as described above.

The informant stated that 's son had been killed a few years ago. An unidentified source told the informant that may want him to execute his son's murderer. The informant is believed to have been involved in three (3) murders which he will not confirm or deny nor of which he has been prosecuted or investigated for.

The informant is willing to employ any type of electronic surveillance device or telephonic wire taps in order to secure the evidence needed for the possible prosecution of the offenses which may occur or may have occurred prior to this operation. The informant insists on as few individuals as possible to be involved in the operation and it is his preference that he work with Special Agents Roger E. Riedley and Melvin R. Gudknecht of the Department of Labor, Office of the Inspector General due to the rapport established to date and the fact that he knows them by sight.

The informant has contacted no other Federal Agency with the specific information outlined above. The FBI has contacted him regarding his activities with of Pennsylvania, the pornographic bookstores and with Krassner's ties to Russel Bufalino.

The informant was employed by in the 1960's and 1970's as a general handyman. He procured stores and settled leases for the bookstore chain. While employed by , the informant became involved in a number of bombings and arsons for which he was prosecuted and incarcerated.

was killed during a supposed robbery attempt on his auto in Florida in Feburary 1979. The Bureau of Alcohol, Tobacco & Firearms in Pittsburgh has verified the informant's involvement with the bombings and arsons. The ATF Agent also stated he feels that the informant may be one of the few persons available to infiltrate the Boilermakers and organized crime in the Pittsburgh area. ATF believes the informant's personal friendships with organized crime figures in Pittsburgh will be helpful in the infiltration.

The informant is presently on probation in Pennsylvania for arson; New Jersey for firearms violations; and with the Federal Government for bombings.

The informant's ties with Russel Bufalino stem from his employment with John Krassner. The informant allegedly assisted in his payoffs to Bufalino.

The informant stated he would become an operative of the Department of Labor, Office of the Inspector General and attempt to put his NTM Book purchase into operation for $15,000. He would require $7,500 of the fee in advance to begin the operation. The remaining $7,500 would be put in trust to be given to him at the conclusion of the operation. The $15,000 would be exclusive of the fees necessary to purchase the NTM book and other sundry expenses encountered.

In discussion with the informant it is felt by this writer that the fee may be negotiable and that $7,500 initial payment may be spread over portions of the operation rather than at the outset. ATF Agents in Pittsburgh noted that has made significant investments recently and believes the funds may be from the Boilermakers pension fund.

Riedley Exhibit #2

**U.S. DEPARTMENT OF LABOR**
**Office of the Secretary**
**Office of Inspector General**

## REPORT OF INTERVIEW

Date of Interview November 16, 1979

Special Agents Melvin R. Gulknecht and Roger E. Riedley met at the Holiday Inn, Williamsport, Pennsylvania, to discuss the tentative operation in Pittsburgh, Pennsylvania.

[redacted] stated that he will deal as to the $15,000 he expects to receive as payment for his part in the operation. If we can get his probation and fines wiped out in New Jersey (he owes about $900 in fines and has two years to serve on probation), then we can reduce the $7500 up front money to $5000. We mentioned that Special Agents William J. Petraitis and Ross Cogan of the Bureau of Alcohol, Tobacco & Firearms, U.S. Department of the Treasury, have indicated that they were ready and willing to be part of the operation and further stated that all of the organized crime figures in the Pittsburgh area are either connected with the Boilermakers or Steelworkers unions. [redacted] stated that he knew these agents from working with them before and found them acceptable.

[redacted] stated that will not knowingly be included in the operation. will use s name as a reference when he gets in to see . He believes will telephonically call and ask to substantiate [redacted] background and need to get into the union. When asked how he was going to gain access to s office, [redacted] stated that he was going to ask to see him and if he's refused access he was going to put $1000 in cash in an envelope and have the secretary give it to him. [redacted] said this will work for he knows that someone did this and came out of the office in a matter of seconds after the delivery of the money.) will start the operation any time we are ready, he will buy the book through , in Pittsburgh, Pennsylvania, go to Montreal, Canada, to purchase it and if we want go to Philadelphia or any other place we desire. As [redacted] stated, the options are open.

[redacted] also contacted the President of the Operating Engineers Union in Harrisburg, Pennsylvania in order to attempt to get back into the Operating Engineers of which he was formerly a member. The president informed him that presently there was no work in the Harrisburg area but he would put him in touch with a Business Agent in Cleveland, Ohio.

By Melvin R. Gulknecht, Special Agent
Roger E. Riedley, Special Agent

At Philadelphia, Pennsylvania

Date Dictated 11/19/79
Date Transcribed 11/29/79
File No. 31-0-0018

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[redacted] informed us that he received a call from a Business Agent of the Operating Engineers in Cleveland, Ohio and was asked when he was coming out to buy a green book and do some work for them. The Busjness Agent stated he knew of a thousand reasons for him to come out to Cleveland.

[redacted] does not know the Borings Brothers.

If the deal goes dead with , he will pursue Cleveland Operating Engineers.

[redacted] knows personally that at least thirty books have been sold in Pittsburgh, Pennsylvaina. [redacted] knows of one individual personally who has purchased a Boilermaker membership.

[redacted] emphatically stated that he is not working with the FBI in any manner.

The **Chairman**. Now will you go into what he said, then, during those interviews?

Mr. **Gudnecht**. Basically he said that for an amount of $15,000 that he would be able to go into local 154 and make a purchase, as I stated before.

The **Chairman**. In other words, he wanted $15,000 to become an informant for you people?

Mr. **Gudnecht**. Yes, sir, that is correct.

The **Chairman**. For the Government.

Mr. **Gudnecht**. This situation would probably go on for approximately 6 months. We would continue this operation.

The **Chairman**. As I understand it, he said it was his belief that the union official in Pittsburgh would charge him approximately $1,000 for the name of an individual located in Montreal who would sell the NTM book to him.

Mr. **Gudnecht**. That is correct, sir.

The **Chairman**. The informant believed that the actual purchase of the NTM book would be in the area of about $2,000.

Mr. **Gudnecht**. Yes, sir.

The **Chairman**. Was this $2,000 amount in excess of the standard charge for membership in the Montreal lodge?

Mr. **Riedley**. Yes. We were under the impression that the going rate, as per the bylaws of the Montreal lodge, was approximately $200.

The **Chairman**. Therefore, in other words, they were charging in excess of $1,800 to obtain a union card or a union book.

Mr. **Riedley**. Yes, sir.

Mr. **Gudnecht**. Yes, sir.

The **Chairman**. OK. Now, as I understand it, the standard charge in Montreal as you said was $200 for a construction membership and it was about $25 for a shop membership. Is that right, or thereabouts?

Mr. **Riedley**. I did not know that.

Mr. **Gudnecht**. I think so, yes.

The **Chairman**. You think that is right, Mr. Gudnecht?

Mr. **Gudnecht**. Yes.

The **Chairman**. OK. Why would a person pay such an exorbitant amount for a union card?

Mr. GUDNECHT. Well, a working boilermaker could make in excess of between $30,000 and $60,000, depending on the amount of overtime that he works during the year.

The CHAIRMAN. In other words, the wage of a boilermaker at that time was approximately $12.75 an hour. Right?

Mr. GUDNECHT. Yes, sir.

The CHAIRMAN. If he got overtime, then he could make somewhere between $30,000 and $60,000 a year.

Mr. GUDNECHT. Exactly.

The CHAIRMAN. Therefore, that was one of the better skilled trades jobs in this country.

Mr. RIEDLEY. A very small investment for the return.

The CHAIRMAN. As I understand it, boilermakers were in high demand or still are in high demand as a result of the utility industry and other growth construction industries in this country.

Mr. GUDNECHT. Yes, sir.

The CHAIRMAN. If a person buys this book for $2,000, plus maybe $1,000 that was paid to the Pittsburgh union official, is he considered a bona fide member of the Boilermarkers' Union?

Mr. GUDNECHT. Yes, sir, and capable of working anywhere in the United States.

The CHAIRMAN. I see. Did your superior in Philadelphia support your efforts to conduct this operation?

Mr. RIEDLEY. Yes, he did. At first he really felt that this was the type of operation that the Office of Inspector General should undertake, but we had certain inherent limitations which we tried to get around but they really presented a big obstacle.

The CHAIRMAN. As a matter of fact, your supervisor, who as I understand it was Darwin L. Steelman at the time——

Mr. GUDNECHT. Yes, sir.

The CHAIRMAN [continuing]. He wrote the Deputy Inspector General on October 24, 1979, supporting the operation. Is that correct?

Mr. RIEDLEY. Yes, sir.

The CHAIRMAN. Then I would introduce at this time Riedley Exhibit No. 3 which actually is the Steelman letter.

[Riedley Exhibit No. 3 follows:]

# memorandum

Riedley # 3.

DATE: October 24, 1979

REPLY TO ATTN OF: Darwin L. Steelman, Special Agent-Supervisor
Philadelphia OIG/OCU

SUBJECT: Boilermakers Local Union 154
31-0-0018

TO: Ron Goldstock, Deputy Inspector General
Attn: Stu Eder, Organized Crime Coordinator

Attached Form OIG-112 is forwarded for your consideration.

Attached also is a memorandum setting forth a conversation with Jerry Toner which is self-explanatory.

Indictments are attached per conversation with Eder. The cases in question (77-20054 U.S. v. Cunningham and 77-20077 U.S. v. Patrick Southern District of West Virginia) have not been reported to the Federal Register.

I have discussed this matter with Strike Force Attorney in Charge Friedman who has some reservations about us working in Pittsburgh, however, I advised him, if we were permitted to use the informant in an undercover operation, he has the contacts to penetrate the Buffalino family's activity in the Middle District.

I have further discussed the matter with one of the ATF Supervisors in Pittsburgh who is willing to provide limited back-up support in Pittsburgh.

Contact was made with Henry Keyserligk, Attorney attached to the Attorney General's Office, Province of Quebec, Canada (514-473-3360). Keyserligk expressed full cooperation of their government and any resources at their disposal in the proposed operation.

I recognize some of the problems we may encounter should we embark on this operation, however, I believe it is the type of operation which may very will establish Department of Labor, Office of the Inspector General as an effective investigative agency. The two Special Agents who have met the informant are capable and eager to demonstrate their ability to conduct such an operation.

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6
5010-112

-2-

For planning purposes, I believe we can conduct the operation with four (4) OIG Special Agents and anticipate moving the informant out of the Pittsburgh area to the Middle District within three (3) months. This office is prepared to provide two (2) of the four (4).

I request you give this matter serious consideration and take the necessary steps to secure the funding and additional resources.

Attachments
  Form OIG-112
  Memorandum of Interview
  Indictments

The **Chairman**. Did you establish through other law enforcement agencies that this informant was credible?

Mr. **Riedley**. Yes, sir. We had gone through Mr. Tom Crawford, who was the assistant U.S. attorney in Pittsburgh, and spoke to him. He had dealt with the Boilermakers on prior occasions. We also contacted Alcohol, Tobacco, and Firearms, and we were in touch with the Pennsylvania Crime Commission also.

The **Chairman**. As I understand, you checked the informant's past work with law enforcement agencies and the U.S. attorney. You checked with those agencies and the Pennsylvania Crime Commission to determine if the union officials you identified were connected with any organized crime figures or if any past allegations had been made about them. Is that correct?

Mr. **Riedley**. Yes, sir.

Mr. **Gudnecht**. Yes, sir.

The **Chairman**. What specific agencies did you contact about the informant?

Mr. **Riedley**. He had worked as an operative with Alcohol, Tobacco, and Firearms He had been caught in some very bad things and he worked well with the ATF agents. The U.S. attorney also said that he was a very credible person.

The **Chairman**. That is Mr. Thomas Crawford——

Mr. **Riedley**. Yes, sir.

The **Chairman** [continuing]. Who was then the assistant U.S. attorney there in the Pittsburgh area.

Mr. **Gudnecht**. Yes, sir.

The **Chairman**. As I understand it, the agent for the Bureau of Alcohol, Tobacco, and Firearms in Pittsburgh stated that he felt the informant may be one of the few persons available to infiltrate the Boilermakers and organized crime in the Pittsburgh area.

Mr. **Riedley**. Yes, sir.

The **Chairman**. The ATF agent believed that the informant's friendship with organized crime figures in Pittsburgh would be helpful in the infiltration, also.

Mr. **Riedley**. That is correct.

Mr. **Gudnecht**. Yes, sir.

The **Chairman**. I would introduce Riedley Exhibit No. 4, without objection. This happens to be the ATF verification of the informant's reliability.

[Riedley Exhibit No. 4 follows:]

undated ATF/LABOR

Kiedley Exhibit # 4

## MEMORANDUM OF INTERVIEW

To: File #31-0-0018

In re: Confidential Informant

Ross Cogan and William Petraitis, Special Agents of the Bureau of Alcohol, Tobacco & Firearms, were interviewed on November 14-15, 1979 at their Pittsburgh, Pennsylvania office regarding the informant and the possible defendant Fred

The agents offered the following documents and facts regarding the informant, his previous dealings with ATF and Fred Gaultieri:

Informant

Documents: NCIC Rap Sheet
Personal History Statement

Other Facts:

The informant became an operative of ATF after AUSA Tom Crawford of Pittsburgh, Pennsylvania, explained to him that several charges against him would be dropped if he participated.

The informant was wired and obtained evidence to convict one individual in a bombing and also resulted in an indictment of , "King of Porn" in the Northeastern United States. Prior to the indictment being made public was murdered.

The ATF agents believe that the informant's integrity is intact due to the fact that the indictment was never made public.

The informant was a valuable tool in the investigations and performed above expectations.

The informant appeared in court and the Grand Jury and his testimony before the Grand Jury was excellent.

The informant has an excellent background, arsons and organized crime connections, which would make him accessable to the Boilermakers (i.e., ATF is willing to work the case with the Dept. of Labor - OIG and to share in expenses involved.

ATF is extremely interested in having the informant infiltrate [redacted] regarding a recent rash of prostitute killings in the Pittsburgh area.

Fred Gaultieri

[redacted] once was recognized as an organized crime figure in the Pittsburgh area as late as 1972.

[redacted] owns a restaurant and bar known as [redacted], Pittsburgh, Pennsylvania, (telephone: [redacted]).

[redacted] was a former boilermaker who is presently working for [redacted] as manager of the bar and restaurant. He receives a disability pension from the Boilermakers.

Investigation carried out by ATF in Pittsburgh involve members of the Ironworkers or Boilermakers in a majority of cases.

[redacted] purchased numerous rifles, shotguns, and pistols with union funds and gave them to other Business Agents. Case file on that investigation in DOL/OIG files. (file attached)

He is associated with an organized crime figure by the name of Pitzarell and also with John LaRocca.

Placed the Health and Welfare insurance with an insurance agency in Boston of which [redacted] brother [redacted] is an agent.

Agent Petraitis stated that ATF would be available to assist the DOL/OIG in this matter if the informant could supply information to ATF which would be useful to them. Petraitis' supervisor, Charles Perlick, advised that ATF could help with the monies the informant requests if the information is helful to cases under their jurisdiction.

The ATF agents had no knowledge of the informant being involved in or directly responsible for any murders to the best of their knowledge.

Roger E. Riedley
Special Agent

Melvin R. Gutknecht
Special Agent

The CHAIRMAN. Then I would introduce Riedley Exhibit No. 5, without objection. This is the collateral request for the organized crime information.

[Riedley Exhibit No. 5 follows:]

COMMONWEALTH OF PA.

3 Riedley Exhibit 5

May 8, 1980

SUBJECT: Collateral Request
Re: U. S. Department of Justice
Organized Crime and Racketeering Section
Philadelphia Strike Force

TO: Franklin R. Booth
Special Agent In Charge
Southeast Regional Office

FROM: Oliver H. Hunter
Special Agent In Charge
Western Regional Office

Pursuant to a request from Special Agent Roger RIEDLEY, Philadelphia Strike Force, for information concerning whom Special Agent RIEDLEY described as a subject of a Strike Force investigation, it is requested that your office consider the dissemination of two (2) reports contained in the JOHN BAZZANO, Jr., (111-90-63) file maintained at central records in St. Davids: [illegible] 63

1. L.C.B. check, dated September 18, 1972, entitled FRAN-RU, INC. 111-90-63/[illegible]

2. Corporation bureau check, dated November 6, 1972, entitled FRAN-RU, INC. [illegible] /10

Special Agent RIEDLEY has been apprised of the P.C.C. disclosure requirements and was advised to contact the Southeast Regional Office one week from the date of this memorandum to schedule his obtaining the reports in person at your office.

The CHAIRMAN. Without objection, all five exhibits are now in the record.

What were those ties with organized crime?

Mr. GUDNECHT. We would just as soon not identify the informant any further, if it is OK with you, Senator.

The CHAIRMAN. As I understand it, the informant was said to have ties with Mafia leadership in this country.

Mr. GUDNECHT. Yes, sir, that is correct.

The CHAIRMAN. You do not mind my mentioning the one Mafia leader?

Mr. RIEDLEY. I think the one would be okay.

The CHAIRMAN. He mentioned Russel Bufalino.

Mr. GUDNECHT. That is correct.

The CHAIRMAN. Now the union official that the informant was to approach, as I understand it, had been identified as an associate of organized crime in the Pittsburgh area by the Alcohol, Tobacco, and Firearms Division. Is that correct?

Mr. RIEDLEY. Yes, sir, and the U.S. attorney, Thomas Crawford.

The CHAIRMAN. Also the Pennsylvania Crime Commission, as well as Mr. Crawford, the former assistant U.S. attorney.

Mr. RIEDLEY. That is correct.

Mr. GUDNECHT. Yes, sir.

The CHAIRMAN. All of those had identified that individual union leader as associated with organized crime.

Mr. GUDNECHT. The credible operative also. Yes, sir.

The CHAIRMAN. As what?

Mr. GUDNECHT. As a credible operative also.

The CHAIRMAN. OK. Was the Repepe family of Pittsburgh said to be involved?

Mr. RIEDLEY. There seemed to be some connection through marriage in that situation, yes.

The CHAIRMAN. As I understand it, the ATF said the target of the informant was an associate of the Repepes, which is a reputed Mafia family in Pittsburgh.

Mr. RIEDLEY. That is also correct.

Mr. GUDNECHT. Yes, sir.

The CHAIRMAN. You are aware of that?

Mr. RIEDLEY. Yes, sir.

The CHAIRMAN. As I understand it, the informant asked for money in return for his assistance, and that amounted to $15,000.

Mr. GUDNECHT. Correct.

The CHAIRMAN. What was your reaction to this offer?

Mr. RIEDLEY. We considered that to be quite a substantial sum but as we spoke to the informant, it became quite apparent that he was willing to negotiate. He seemed to have some personal financial problems which seemed to be at stake for him but the fee was ngotiable. However, we considered that for $15,000 if we could carry out an operation of that magnitude, we would save approximately 2 to 4 man-years of agents' salaries which would amount to probably $150,000, so if we could accomplish that task that the informant wanted to do——

The CHAIRMAN. It really would have been a pretty small price to pay, if you consider all of the allegations that have been made in this prior hearing on Tuesday concerning not only the selling and purchasing of the inflated union books or cards but also the 50-50 raffle scheme, if that in fact is as it was reported.

Mr. Riedley. Yes, sir.

Mr. Gudnecht. Yes, sir.

The Chairman. As a matter of fact, it would have been a small price to pay to have been able to crack some of these Mafia ties in the Pittsburgh area. Isn't that correct?

Mr. Riedley. Yes, sir.

Mr. Gudnecht. Yes, sir.

The Chairman. As I understand it, you also sought guidance from the national office and were told by Mr. Robert Nicholson, the organized crime coordinator in the Inspector General's Washington office, that the Labor Department lacked statutory authority to pay for such undercover activity.

Mr. Riedley. Yes.

The Chairman. If the money had been made available, do you think this undercover operation would have worked?

Mr. Riedley. It is always hard to say what that type of operation will do but it is the kind of operation that you have to take the opportunity and run it to the fullest extent.

The Chairman. I take it you felt it had a pretty good chance with this type of informant and with the recommendations he had from law enforcement officials, not only in Pennsylvania but elsewhere.

Mr. Gudnecht. With the individual we were working with, I felt confident that we could reach the objective we were seeking.

The Chairman. Did you have the cooperation of the law enforcement officials in Canada?

Mr. Gudnecht. Yes, sir. I made contact with the Crown Attorney of the Canadian Government on October 24, 1979, Henry Keyserligk, K-e-y-s-e-r-l-i-g-k, the Crown Attorney in Montreal, Canada, and I informed him of the undercover operation and that we would have to cross into Canada, and requested the resources of the Canadian Government to participate in this investigation with us.

The Chairman. As I understand it, he promised his support.

Mr. Gudnecht. Yes, he did.

The Chairman. Therefore, you consulted with Mr. Keyserligk, then, personally.

Mr. Gudnecht. Yes, I did, sir.

The Chairman. Well, did you close the case at this point?

Mr. Gudnecht. No, sir.

The Chairman. Did Gary Boring contact you about the same matter?

Mr. Riedley. Gary Boring contacted us in early January 1980 and he essentially spoke of the same book-buying scheme that the informant had come to us with, and we considered that two separate individuals coming to us with the same problem so we considered it to be more than a chance happening, and it looked a little better at this point.

The Chairman. These also included charges against the union official who allegedly could be compromised. Is that correct?

Mr. Riedley. Yes.

The Chairman. I am going to have to recess until I can get back from the White House. I do not have any choice. I apologize for inconveniencing all of our witnesses but I just cannot do anything else. Therefore, with that, we will recess until I can return from the White House. If you folks will still keep yourselves available, we wlll continue this line of questioning.

Mr. GUDNECHT. Yes, sir, we will.

The CHAIRMAN. Thank you.

[Recess taken.]

The CHAIRMAN. I apologize for being so late. We will resume this committee hearing. I cannot control those things. I wish I could but I cannot.

According to your July 3, 1980 report of investigation, "At this date there appears to be substance to the three allegations outlined: one, membership selling under 29 U.S.C. 50-c, embezzlement; two, 50-50 monthly plan, 18 U.S.C. 1951, extortion, three, reconstruction of the Colonial Inn, 19 U.S.C. 186, Taft-Hartley." Do you still think those charges are of substance?

Mr. RIEDLEY. Since that original report we have not done any further investigation. At the time that report was written, we did believe there was substance to the report even though some of the individuals that we had interviewed at the request of the Borings did not give us exactly what we wanted, mainly them admitting that they were involved in the buying scheme. They did indicate to us strongly that it had gone on.

The CHAIRMAN. As far as you are concerned, you are convinced that those three charges were substantial charges and were valid charges.

Mr. RIEDLEY. Yes, it did appear to us that, with the exception that the statute may have just about run on the Taft-Hartley violations.

The CHAIRMAN. I will refer at this time to the Boring Exhibit No. 3 and have that placed in the record at this point. It is already in the record from the Tuesday hearing.

[Boring Exhibit No. 3 appears previously, see p. 38.]

The CHAIRMAN. The first two of these items in the report of investigation are self-explanatory, that is, the membership selling and the 50-50 monthly plan. Now I believe the item on the Colonial Inn involves the allegation by the Borings that the several boilermakers actually remodeled the inn while on the payroll of Foster Wheeler, a contractor under a collective bargaining agreement with local 154. Is that correct?

Mr. RIEDLEY. Yes, sir.

The CHAIRMAN. Who is the union leader who owned the Colonial Inn or was one of the owners of the Colonial Inn?

Mr. RIEDLEY. That was Fred Gualtieri.

The CHAIRMAN. Therefore, that is Mr. Gualtieri?

Mr. RIEDLEY. Yes, sir.

The CHAIRMAN. I understand that the Borings provided you a list of local 154 members who had purchased memberships in other lodges and transferred to local 154. Is that correct?

Mr. RIEDLEY. Yes, sir.

The CHAIRMAN. We will replace Boring Exhibit No. 2 in the record at this point, as well as in the record on Tuesday, without objection.

[Boring Exhibit No. 2 appears previously, see p. 36.]

The CHAIRMAN. Did the Borings allege that these persons were paying in excess of a legitimate amount for their union books?

Mr. RIEDLEY. Yes, they indicated to us that these persons were involved in the book-buying scheme and would speak to us.

The CHAIRMAN. As I understand it, there were 34 names on that list.

Mr. RIEDLEY. I do not know the approximate number.

Mr. GUDNECHT. Approximately, yes, sir.

The CHAIRMAN. However, you agree approximately that many names.

Mr. RIEDLEY. Yes.

The CHAIRMAN. How many of them did you interview?

Mr. RIEDLEY. We interviewed approximately 4 or 5 of those individuals.

The CHAIRMAN. As I understand it, you interviewed around two in person and approximately two on the phone.

Mr. RIEDLEY. Yes.

The CHAIRMAN. Why didn't you interview all of them?

Mr. RIEDLEY. During the time that we were out in that area, we attempted to interview individuals that the Borings told us would provide us with the kind of information we were looking for. We interviewed these four people, and we did not come up with the exact type of information which we needed, which would be hard evidence that we could present in court, although these people did tell us again and again that the book-buying was going on but they were not involved in it. Therefore, we became just a little suspect of the list but it still appeared to us that it strongly suggested it was going on, even though these people would not admit it.

Therefore, due to the time restrictions we had while we were there and the fact that we were not getting the real hard evidence, we let it go at that.

The CHAIRMAN. I see. What did these interviews establish?

Mr. RIEDLEY. The interviews mainly established that these persons did buy their boilermaker memberships outside of local 154 and had come back and attempted, and some had worked under the jurisdiction of local 154 in Pittsburgh.

The CHAIRMAN. As I understand it, these witnesses were extremely reluctant to talk to you about it, though.

Mr. RIEDLEY. Yes, sir, they were.

The CHAIRMAN. However, they had purchased their books out of town and at exorbitant prices.

Mr. RIEDLEY. Yes, now they would not admit to that exorbitant price at that time.

Mr. GUDNECHT. Only the standard fee.

Mr. RIEDLEY. They were very reluctant. That was the key issue in the whole thing. They knew what we were after and they were—I think it was the threat of economic harm if it ever came out that they had admitted to this. That seemed to be the position.

The CHAIRMAN. I see. They kind of indicated that to you?

Mr. RIEDLEY. Indirectly, yes.

Mr. GUDNECHT. Yes, more or less.

The CHAIRMAN. In other words, you knew what the score was?

Mr. RIEDLEY. Yes.

Mr. GUDNECHT. Yes.

The **Chairman**. At this point I will introduce the Riedley Exhibits 6 through 9 on these reports of interviews.

[Riedley Exhibits 6 through 9 follow:]

13 Riedley Exhibit #6.

**U.S. DEPARTMENT OF LABOR**
**Office of the Secretary**
**Office of Inspector General**

## REPORT OF INTERVIEW

Date of Interview April 1, 1980

Indiana, Pennsylvania 15907, was interviewed on the above date by the undersigned who identified himself as a Special Agent of the Office of the Inspector General, U.S. Department of Labor. was advised that the undersigned was conducting an official investigation pursuant to responsibilities delegated to the Inspector General and his cooperation was solicited. was also advised that the undersigned was assisting in a Federal Grand Jury probe which was under the direction of the Philadelphia Strike Force. voluntarily furnished the following information.

was telephonically interviewed regarding his membership in the International Brotherhood of Boilermakers and his working under the jurisdiction of Local Lodge 154 in Pittsburgh, Pennsylvania.

stated that he joined the International Brotherhood of Boilermakers in 1967 and worked with a National Transit Mechanics Book (NTM).

worked during 1970 through 1977 at various power plants in the Indiana area. At times, was forced to travel outside of Pennsylvania while many "pencil pusher" friends of worked on the Pennsylvania jobs.

knew that several employees of Foster Wheeler (prime contractor at the power plans and under contract with Local Union 154 of Pittsburgh, while on the Foster Wheeler payroll actually worked remodeling the Colonial Inn in Indiana. stated the Colonial Inn was owned by Phil Pittarel and his cousin

also stated that had several persons perform work at the Colonial for free and promised them employment in the Boilermaker job areas.

has heard of book selling but was never in contact with anyone who actually purchased a book.

stated that on several occasions, while employed under the jurisdiction, that several hand guns were raffled off. He did not know any winners of the guns.

Date Dictated 4/2/80
Date Transcribed 4/2/80
File No. 31-7244-0001

By Roger E. Riedley, Special Agent
At Philadelphia, Pennsylvania

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Other side

OIG 103 (11)

. was also familiar with the 50-50 plan monthly drawing. stated that every person working on the Local Union 154 jobs were asked to buy the 50-50 tickets once a month. . stated that if you did not buy the tickets you were the first to be laid off or put off the job in some manner. To work a person had to buy the tickets.

. . stated that he is no longer working as a Boilermaker. has not been called to work since 1977 and still keeps his dues paid up in case he has to go back to work under Local 154.

Kiedley Exhibit #

| U.S. DEPARTMENT OF LABOR<br>Office of the Secretary<br>Office of Inspector General | REPORT OF INTERVIEW |
|---|---|

Date of Interview June 6, 1980

of Osceclo Mills, Pennsylvania, was interviewed on the above date by the undersigned who identified themselves as Special Agents of the Office of the Inspector General, U.S. Department of Labor. Mr. gas advised that the undersigned were conducting an official investigation pursuant to responsibilities delegated to the Inspector General and his cooperation was solicited.

Mr. voluntarily furnished the following information:

was interviewed regarding his activities with Business Manager of Boilermakers Local , Pennsylvania.

has been in the Boilermakers for 29 years and is nearing retirement.

He has been a Steward for the local for many years and is also a general foreman of Local

is presently working on the , PA Pennsylvania Company plant.

stated that in 1963 while he was working down south he was introduced to Gualtieri and was told was going to run for Business Manager of Local 154. stated that in 1963 was flat broke. was elected in 1963 and has held the post since then.

stated that it is common knowledge that books "memberships" are sold at various locals in the Northeastern United States. states that an , Business Agent of Local Boilermakers in Charleston, South Carolina, is the contact for buying books there. says that is a poor local and needs the members. also stated that the Titusville, Pennsylvania and Montreal, Canada locals also sell books. An individual by the name of sold books in Titusville.

also noted that puts many people on the union jobs who are not union members. hires the sons of many influential persons to gain favors from them. gave the Pennsylvania State

By Roger E. Kiedley, Special Agent
Ricardo J. Zavas, Special Agent

At Philadelphia, Pennsylvania

Date Dictated 6/13/80

Date Transcribed 6/16/80

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Police Commissioner's son a summer job and also hired several State Policemen for their two or three week vacation period. Many of the people working on the jobs do not have cards as trainees.

stated that during the construction of the power plants near Indiana, Pennsylvania in the late 1960's and early 1970's you could buy anything you wanted. This included guns, drugs, cigarettes and liquor. The guns were chanced off by a of Homestead, Pennsylvania.

stated that a was a big man in Local and is now an organizer for the Boilermakers International in Kansas City, Missouri. In the 1970's was a general foreman for Local . While a foreman on the Homer City, Pennsylvania plant, stole a large amount of material from the job. He used the material to build two houses in Coral, Pennsylvania near the plant. used to ride through the job site and pick up carpenters and electricians to do the work on the homes. The individuals picked up were paid by Foster and Wheeler, the General Contrator on the plant.

eventually sold both houses for $25,000 when he got in trouble for beating up a woman in the Indiana, Pennsylvania area.

also constructed a large boat at Beaver Falls, Pennsylvania, with union labor and materials. sold the boat in Florida for $500,000 in the late 1970's.

At one time a , and the timekeeper at Foster and Wheeler cut 90 paychecks for 30 employees. They were eventually caught.

stated that was the owner of a bar in Indiana called the Colonial. He also knows a was involved in the bar.

and his brother, Al, were members of Local but knew nothing about being a Boilermakers. is a professional Steward for Local and knows little about Boilermaking.

stated that near Christmas on one occasion he accompanied on a trip to several Boilermaking contractors in the Pittsburgh, Pennsylvania area. would go into the contractor and come out with an envelope. never saw what was in the envelope but told him that it was a Christmas gift from the contractor. One of the contractors was Monroe Boiler. refused to name the rest of the contractors. stated that he believes that a of Connecticut handles Local Health and Welfare insurance. stated this area should be checked very closely.

stated that an Al Snyder is on the Health and Welfare Fund. has heard on occasion that Snyder's company, Snyder Boiler is a delinquent contributor to the plan.

Kiedley Exhibit #

**U.S. DEPARTMENT OF LABOR**
Office of the Secretary
Office of Inspector General

**REPORT OF INTERVIEW** 8

Date of Interview April 7, 1980

Telephonic interview of , dated April 7, 1980. Call was placed at approximately 6:35 PM to telephone number stated that he wanted me to stay away from Wallace Scrambo who originally identified as a friendly witness but now is one of Ironhead's flunkies. About two weeks ago, Scrambo was boozed up in a bar and bragging about all the good jobs he's been getting since he put pressure on the Local Union by initiating a complaint. Scrambo said he now has a "deal" with Ironhead and for us not to contact him.

stated that the 50-50 raffle is still going strong and that he has five tickets in his pocket that he had to buy last week. When he was approached by the shop steward, he said "I'll take two." The Steward counted five tickets and gave them to him. You don't ask them about how many tickets to buy, they tell you. never knew anyone nor heard about anyone who ever received any money from the Sick Benefit Fund which the 50-50 was supposed to contribute to and he's been on jobs in the area for eleven years. The 50-50 tickets are passed out once a month and a drawing occurs on the third week of every month. No one knows where the 50% of the collection goes. The Steward usually collects work permit money on one day then the following day he passes out the 50-50 tickets.

Relative to the permits, stated that he has known there were 3 to 400 permit men working on jobs and he knows is not reporting these funds and alluded to the fact of a double set of books. stated that when the Steward receives the permit money he records the name of the individual, his local and the amount paid and also gives the permit man a receipt. alleges that the numbered receipts books are being duplicated and that we should look into it.

has not heard of stepping down or retiring and he added, "as long as he can make money, he'll stay."

stated that I can contact him anytime for additional information and that he is usually home between 6:00 and 6:30 in the evening. He further stated that he would be willing to testify on behalf of the government.

Mel R Goldknecht

By Melvin R. Goldknecht, Special Agent

At Philadelphia, Pennsylvania

Date Dictated 4/8/80

Date Transcribed 4/8/80

File No. 31-7244-0001

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**U.S. DEPARTMENT OF LABOR**
Office of the Secretary
Office of Inspector General

Riedley Exhibit #9

**REPORT OF INTERVIEW**

Date of Interview April 20, 1980

, was interviewed at , Whickliffe, Ohio, on the above date by the undersigned who identified themselves as Special Agents of the Office of the Inspector General, U.S. Department of Labor. was advised that the undersigned were conducting an official investigation pursuant to responsibilities delegated to the Inspector General and his cooperation was solicited. voluntarily furnished the following information.

was interviewed regarding his membership in Boilermakers Lodge #329 of Philadelphia, Pennsylvania. stated that he had become a member of Local 329 in the early 1950's. At one period in the early 1960's, he was elected President of Local 329. Presently, is still a member of Local 329 but because of conflicts with the present business manager, Walter Schindler, has been unable to procure work as a Boilermaker in the Philadelphia area. Schindler is presently employed by a large power company on the outskirts of Cleveland. stated that he was aware that there were numerous irregularities occurring within Local 329.

believed that Local 329 or its officers were selling union memberships or as known in the trade, "books" to individuals outside of the jurisdiction of Local 329. believed that the reason for the sale of Local 329 books to individuals of other jurisdictions was because they were so cheap, usually around $100. Fisher believed that the officers were charging more than the fee as stated in the by laws of union constitution.

did not know if the individuals who came from the Pittsburgh area did so with the blessing of Fred Gualtieri, Business Manager of Local 154 in Pittsburgh. Fisher was sure that numerous individuals had come from the Pittsburgh area and bought books in Philadelphia. He believed that several of those individuals who bought books in Philadelphia in Local 329 had been taken in to Local 154 in Pittsburgh.

, a former employee of Local 329, was a good friend of . stated that was aware of the many illegal activities that Walter Schindler was involved in as an officer of Local 329. passed away approximately one year ago.

Roger E. Riedley
Roger E. Riedley, Special Agent
Ricardo J. Zayas, Special Agent

By Roger E. Riedley, Special Agent / Ricardo J. Zayas, Special Agent
At Philadelphia, Pennsylvania

Date Dictated 4/21/80
Date Transcribed 4/24/80
File No. 31-7244-0001

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OIG 103 (11/78)

[redacted] stated that the attorney presently representing Local 329, Louis Wilderman, at one time represented 329 in a suit which [redacted] had filed with the National Labor Relations Board. [redacted] charged that Wilderman and an individual working for the National Labor Relations Board fixed his case and nothing was ever done on [redacted] complaint.

[redacted] stated that if individuals were able to look at Local 329's day books he would find numerous individuals, members of Local 329 who lived outside of the 329 jurisdiction. [redacted] stated that individuals who are members of Local 329 but perform duties out of Local 329's jurisdiction pays health and welfare and pension contributions to the International Union located in Kansas City. It is [redacted] contention that numerous individuals have bought books simply to become a Boilermaker without the necessary qualifications. [redacted] stated that by reviewing the day books we would be able to check the number of individuals who are members of Local 329 but are not in 329 area and who could not perform work in the 329 area because of the distance with which they live from 329.

[redacted] stated that a Business Agent of Local 13 Boilermakers Lodge in Bristol, Pennsylvania, by the name of Mike Gaugin helped his son purchase a union book from Local 329 thereby becoming a certified journeyman. Gaugin gave Schindler a $25 gift certificate for arranging for his son to become a member of Local 329.

[redacted] stated that in the late 1970's Shindler supposedly purchased a Cadillac from a Mr. Fitzpatrick, Penn Jersey Boiler, for approximately $7000. [redacted] feels that Schindler may have received some deal on the Cadillac. Penn Jersey Boiler is a contractor in the Local 329 area of jurisdiction. [redacted] stated that Local 329 does a lot of work on Penn Jersey Boiler jobs. [redacted] feels that Schindler has also been embezzling money from Local 329 but has no actual knowledge or any way to verify his feelings. [redacted] knows of individuals who have been placed on the Local 329 pension plan who he feels have not worked the required number of hours to become covered under the pension. One of these individuals is John Merifield. He stated that Merifield lives near Woodbury, NJ, near Joe's #2 Truckstop.

[redacted] had a break in service with Local 329. During his break in service, he worked with the Sprinkler Fitters, Local 699. John Clavin is a member and Business Agent of Local 699.

Schindler supposedly took up collections from members of Local 329 and gave the collections to John Clavin as he stated, to keep on a good working relationship with Local 699.

[redacted] stated that he is a friend of the Borings of Indiana, Pennsylvania and knows of the problems they have had with Local 154 in Pittsburgh, Pennsylvania. [redacted] stated that while he worked under the jurisdiction of Local 154 in Pittsburgh, he had no problems. He did state that while working under 154 he was required to purchase 50-50 tickets for the Sick Members Benefit Fund once a month. He said he was required to purchase at least five tickets per month at $1.00 each. [redacted] stated that if he did not purchase these tickets he would be the first individual to be laid off from a job. He stated that any individual that did not purchase the tickets was laid off almost immediately.

[redacted] believes that Harry Instase, of Clementon, New Jersey and John Kelly, of Philadelphia, purchased books from Local 329. [redacted] stated that while he was working under Local 154 in Indiana, Pennsylvania, he became friendly with the Borings. At one time, one of the Borings pointed out and individual to him by the name of Jim Henry, who the Borings said was a salesman for Gualtieri - meaning he was an individual who arranged for the purchase of union books through Gualtieri.

[redacted] plans to retire from active work in Boilermaking at the end of May 1980. He stated that he will not receive any pension because of his break in service but believes that he will be able to survive by doing small jobs and with Social Security.

[redacted] Street in Philadelphia, telephone Number RE9-7025 is a friend of [redacted] and would probably be willing to speak about the problems of Local 329.

The CHAIRMAN. You stated in your report of investigation dated July 3, 1980, that there appeared to be substance to this and the other two allegations. What led you to believe that the Borings were credible?

Mr. RIEDLEY. Well, the Borings basically came to us with the same allegations as the informant, and then the other people that we spoke to, the other four people that we interviewed, also indicated strongly—although they did not admit to being a part of the conspiracy as we wished they would—so that still led us to believe that it was going on. It would just take a while to find the right people to stand up.

The CHAIRMAN. I see. The proposed informant, as I understand it, went one step beyond the Borings' allegations in that he was positive that he could personally purchase a book and establish a direct link between the Pennsylvania official as well as the local in Montreal. Is that correct?

Mr. RIEDLEY. Yes.

Mr. GUDNECHT. Yes, sir, it is.

The CHAIRMAN. Was Montreal the only local that was allegedly selling these books to transient welders?

Mr. RIEDLEY. No, sir.

The CHAIRMAN. As I understand it, the allegations included locals in at least four other States.

Mr. RIEDLEY. Yes, I would say so.

The CHAIRMAN. Did you attempt to get assistance from other Federal agencies when you learned that Labor could not finance the undercover informant?

Mr. RIEDLEY. Yes, we attempted to work with Alcohol, Tobacco, and Firearms.

The CHAIRMAN. What was ATF's reaction?

Mr. GUDNECHT. Their reaction was that they had to have some Federal violations of their laws, to input any money for an operation of this sort.

The CHAIRMAN. They did not see how they could tie in what was happening here with their Alcohol, Tobacco, and Firearms regulations and laws.

Mr. GUDNECHT. Yes, that is correct.

The CHAIRMAN. Turning to the Borings' allegations concerning the 50-50 raffle, you said in your report of investigation that these allegations also had substance. Could you explain that?

Mr. RIEDLEY. We felt that the 50-50 raffle ticket idea was a cash transaction, and our experiences actually as financial criminal investigators lead us to believe that cash is a very hard item to control, No. 1. No. 2, the Borings' allegations of the stubs being in the trash cans would indicate to us that there was probably very little control over the issuance and the actual sale of these tickets. From our experience it seemed to be a very valid point.

The CHAIRMAN. I see. As I understand it, as you interviewed several other boilermakers who had worked within this local's jurisdiction, they stated that they were forced to purchase five $1 tickets monthly in order to retain their employment. Is that correct?

Mr. RIEDLEY. Yes, sir.

Mr. GUDNECHT. Yes, sir.

The **Chairman**. Was there any question as to the accounting of funds or the legitimacy of the drawing?

Mr. **Riedley**. We never got into that because we tried to keep a low profile in this investigation—and it was really a preliminary investigation—to see if we could talk to people before they had been alerted by union officials not to talk to us. That was the situation.

The **Chairman**. I understand the forced sale of 50-50 tickets is a violation of Federal law. Is that correct?

Mr. **Riedley**. Yes, sir. It could possibly be on the union member for him to maintain his job, being forced to buy these tickets.

Mr. **Gudnecht**. Potential embezzlement also.

The **Chairman**. Actually, the fund would have to be reported under the Taft-Hartley law to the Labor Department. Isn't that correct?

Mr. **Gudnecht**. Yes, sir.

The **Chairman**. Even if you had audited the 50-50 books, would that have established positively a full accounting of the funds?

Mr. **Riedley**. No, sir. It all depends on the amount of tickets sold, and that is where the crux of the matter seemed to be.

The **Chairman**. Some of them seemed to be making their way to the trash bin. Is that right?

Mr. **Riedley**. Yes, sir.

The **Chairman**. The last Boring allegation that you found to have substance was construction work on the Colonial Inn in Indiana, Pa. In addition to the allegations made by the Borings, did you hear these allegations from any other sources?

Mr. **Riedley**. Yes, sir. When we interviewed some of the other individuals, everybody seemed to know that this inn was worked on by numerous people. Again, they were reluctant to give us some names but they did say that materials and labor went into this construction of this inn.

The **Chairman**. On July 3, 1980, your office wrote Ronald Goldstock, the Acting Inspector General of the Department of Labor, that the Philadelphia Strike Force was closing the file on this case with concurrence of the strike force attorney in charge. Why was that case closed at this time?

Mr. **Riedley**. We felt at that time the case had possible implications of a scale larger than our office could handle, and the strike force attorney also felt that he did not have jurisdiction in the Western District of Pennsylvania. We were also involved in a very large organized crime case which was consuming all of our manpower at the time. We had four agents directly working on this case of seven organized crime individuals which we subsequently convicted all of them. This was right at the time when we were closing this case, when we indicted these people.

The **Chairman**. I see. Well, I would introduce without objection at this time the Riedley Exhibit No. 10, which is the Steelman letter to Goldstock.

[Riedley Exhibit No. 10 follows:]

Speelman Exhibit # 10

**U. S. Department of Labor**

Office of Inspector General
Office of Organized Crime & Racketeering
PNB Plaza Building, Suite 900
Fifth & Market Streets
Philadelphia, PA 19106
Reply to the Attention of: RFR

July 3, 1980

MEMORANDUM FOR: RONALD GOLDSTOCK
Acting Inspector General

FROM: DARWIN L. SPEELMAN
Special Agent in Charge
Office of Organized Crime & Racketeering
Philadelphia, Pennsylvania

IN RE: Boilermakers Lodge [redacted]
[redacted], Pennsylvania
(Case #31-7244-0001)

The attached relates to several allegations of wrongdoing by Boilermaker Lodges in general and Boilermaker Lodge [redacted] of [redacted], Pennsylvania in particular.

Since October 1979, two informants have contacted the Philadelphia Strike Force regarding Lodge [redacted]. The first contact was made in October 1979 by an individual who wishes his identity to remain confidential. The informant outlined, in detail, a scheme to purchase a union membership in the Boilermakers.

In January 1980, a second informant, a boilermaker contacted this office and related information regarding union membership buying. The second informant also alleged instances of possible extortion and Taft-Hartley violations by Shop Stewards, Business Agents, and Officers of Lodge [redacted]. Both informants named [redacted], Business Manager of Boilermakers Lodge [redacted], as the individual responsible for the illegal activities.

Information supplied by the Bureau of Alcohol, Tobacco & Firearms and the Pennsylvania Crime Commission indicates [redacted] is an associate of numerous organized crime figures in Pittsburgh, Pennsylvania. [redacted] was a partner in a restaurant in Indiana, Pennsylvania, with John Bazzano, presently incarcerated in Danbury, Connecticut, on a federal gambling conviction. [redacted] is also an associate of the Repeppi Family of Pittsburgh, Pennsylvania.

The Philadelphia Office of Organized Crime and Racketeering is closing this file with the concurrence of the Philadelphia Strike Force Attorney in Charge.

In view of the size and scope of a full investigation with the allegations, it is requested that the Office of Inspector General - OOCR Coordinator review the file and make a determination on whether to commit resources to a National Office Project.

The **Chairman**. In the accompanying report of investigation that you sent Mr. Goldstock on July 3, 1980, you stated that "Due to the large geographical area involved, the number of pesons implicated and the numerous violations, this case is being closed and forwarded to the national office for evaluation." I take it that you did think at that time that this case was worthy of further investigation?

Mr. **Riedley**. Yes, we felt that there were situations that could be further developed, even without the informant. It would have been much harder but we felt that there was some substance there, and that due to our lack of manpower the national office may be able to come up with a plan that could help us.

The **Chairman**. The fact is, you characterized it earlier, you felt that this was a bigger case than your office really had the ability to handle at that point with the other duties you had. Is that correct?

Mr. **Riedley**. Yes, that is correct.

The **Chairman**. What did your national—that would be the Organized Crime and Racketeering Section of the Labor Department's Inspector General's office—what did they then do?

Mr. **Riedley**. They received the case from us, and from correspondence that I have seen, they looked into the case. At the same time I think there was a case in Kansas City regarding a similar circumstance. I am not sure but I think the case was referred out there because I spoke with an agent out there regarding the case. At that time I had been in contact with the FBI also. After our national office—because of our inherent limitations there also, they had no large amount of them they could put on it—I began talking with the FBI.

The **Chairman**. Therefore, on or about November 28, 1980, your national office then referred the case to the FBI?

Mr. **Riedley**. Yes, sir.

The **Chairman**. We will place again in the record at this point the Boring Exhibit No. 4 which has already been introduced in the record, without objection.

[Boring Exhibit No. 4 appeared previously, see p. 51.]

The **Chairman**. Did the FBI ever contact you after this referral?

Mr. **Riedley**. Yes, I made the referral at the end of November 1980, and I believe I had telephone contacts with them but the only real contact I had with them after that was on May 1 when they came to review our file of the Boilermakers' case, on the preliminary case that we had conducted in Philadelphia.

The **Chairman**. That was Agent David Mahon. Is that right?

Mr. **Gudnecht**. Yes, that is correct.

The **Chairman**. Was that February 1981?

Mr. **Riedley**. That was May 1981 that he came to Philadelphia to review the file.

The **Chairman**. I see. Therefore, he came from the Pittsburgh office, looked through the files, you provided him what you had and then he left. Is that right?

Mr. **Riedley**. Yes.

The **Chairman**. Therefore, that took place in May 1981?

Mr. **Riedley**. Yes, sir.

The **Chairman**. Did the FBI get back to you?

Mr. **Riedley**. No, sir.

The CHAIRMAN. You mean to say that all these attachments, documents, and exhibits that our staff reviewed were never requested in total by the FBI?

Mr. RIEDLEY. I gave them 13 exhibits with my report. They made a few copies of some other files while they were in the office. This was the day before our trial started so I cannot remember exactly everything that they took but I am sure there are many things that they did not copy.

Mr. GUDNECHT. The other thing that is not noted, Senator, is the fact that we contacted the confidential informant and requested that individual to cooperate and assist the FBI in their investigation.

The CHAIRMAN. I see.

Mr. GUDNECHT. He was opposed to that initially, and what we did was more or less talk him into cooperating with them and we turned that informant over to the FBI.

The CHAIRMAN. Did Mr. Mahon, the FBI agent, did he get the Borings' list of 34 persons who allegedly paid excessive amounts for union books?

Mr. RIEDLEY. Yes, sir. That was part of my exhibit list that I gave the FBI.

The CHAIRMAN. As I understand it, then, from what you said, Mr. Gudnecht, you indicated that you told Mr. Mahon the identity of the confidential informant that Labor could not use because it lacked legal authority to fund the use of a confidential informant.

Mr. GUDNECHT. Yes, sir, that is correct.

The CHAIRMAN. Now did he suggest that he might talk to the informant and sign him up to do the same infiltration job for the FBI that you had contemplated him doing for Labor?

Mr. GUDNECHT. That was our understanding, yes, sir.

The CHAIRMAN. I see. Did you provide Agent Mahon a copy of your July 1, 1980, report of investigation which stated that your case was being closed "due to the large geographical area involved and the number of persons implicated, and the numerous violations" of the case?

Mr. RIEDLEY. Yes, he had a copy of that.

The CHAIRMAN. OK. I would take this wording to mean that you thought a considerable amount of additional investigative work would have to be done to complete this case.

Mr. RIEDLEY. Yes.

Mr. GUDNECHT. Exactly.

The CHAIRMAN. Mr. Riedley, are you aware that the FBI closed this case on June 23, 1981, without any prosecution at all?

Mr. RIEDLEY. No, sir, I was not aware of that until this committee contacted me.

The CHAIRMAN. However, you are aware of it now.

Mr. RIEDLEY. Yes, sir.

The CHAIRMAN. There is no indication in the FBI files that the Bureau did any additional investigative work on this matter after getting the referral from Labor. In fact, the FBI indicated it thought that you had done a complete investigation and had closed the case without turning up anything of interest. An FBI memo of June 23, 1981, which sought to explain the agency's actions in this case quoted Assistant U.S. Atttorney Fred W. Theiman as stating that "The Labor Department had this investigation for approximately 2 years without any successful conclusion before referring it to the FBI."

Does the quote that I just read you from the FBI report surprise you?

Mr. RIEDLEY. Yes, it does, because I think within their own report they state that Agent Riedley started receiving information on this case from informants in November 1979, and I referred the case to the FBI in November 1980. They may be referring to some other Labor Management Services investigation but it was definitely not my investigation.

The CHAIRMAN. Then I would enter at this point the FBI report at Riedley Exhibit No. 11.

[Riedley Exhibit No. 11 follows:]

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Pittsburgh, Pennsylvania
June 23, 1981

RIEDLEY
EXHIBIT
NO. 11

FRED GUALTIERI,
Business Agent,
International Brotherhood of
Boilermakers,
Local 154,
Pittsburgh, Pennsylvania
LABOR MANAGEMENT REPORTING
AND DISCLOSURE ACT OF 1959

On April 25, 1980, French E. Gower appeared at the Wheeling, West Virginia, Resident Agency and stated that subject is involved in the sale of fifty-fifty raffle tickets to members of Local 154 on an involuntary basis. Gower advised that each man, whether a member, traveler, or permit man within the union is required to buy five chances on a weekly basis on the fifty-fifty monthly drawing. The fifty-fifty ticket is supposedly for the Boilermaker Sick Fund for the benefit of the sick members.

On May 14, 1980, Assistant U.S. Attorney (AUSA), Western District of Pennsylvania, Pittsburgh, PA, advised that based upon results of additional investigation in this matter, it should be determined the exact purpose of the fifty-fifty drawing, and he would then consider prosecution.

On July 2, 1980, C. Russell Rock, Investigator, U.S. Department of Labor, Labor Management Services Administration, Pittsburgh, PA, advised French Gower made the same allegation to his department and they had no active investigation in this matter. Rock stated he is acquainted with Wayne and Gary Boring and that the Boring brothers have lodged dozens of complaints with the U.S. Department of Labor regarding Boilermakers Local 154 and Fred Gualtieri. Rock further advised that none of the allegations by the Boring brothers were ever able to be substantiated.

On July 7, 1980, Roger E. Riedley, U.S. Department of Labor, Office of Inspector General, Philadelphia, PA, stated that

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

from November, 1979, through June, 1980, he had been receiving allegations and other information regarding illegal activities of the International Brotherhood of Boilermakers, Local 154, Fred Gualtieri, and at least eight to ten other local unions in numerous states. The allegations center around union book buying and the selling of the fifty-fifty monthly raffle tickets.

On August 11, 1980, AUSA Frederick W. Thieman, Pittsburgh, PA, requested that no active investigation be taken at this time as Strike Force 18 was looking into union activities at the request of Jerome Tonner, Attorney for the Department of Justice, Washington, D.C.

On October 17, 1980, AUSA Frederick W. Thieman advised that Jerome Tonner, attorney, Department of Justice, Washington, D.C., has declined investigation in this matter through the utilization of Strike Force 18, and is leaving investigation in this matter up to the individual judicial districts.

On December 19, 1980, Roger E. Riedley, Special Agent, U.S. Department of Labor, Office of Inspector General, Philadelphia, PA, advised his investigation was terminated due to budgetary restraints.

On April 8, 1981, Michael Whalen, Investigator, U.S. Department of Labor, Labor Management Services Administration, Pension Welfare Benefit Plan, Pittsburgh, PA, stated he recently concluded an investigation of the health and welfare plan of Local 154, International Brotherhood of Boilermakers, Pittsburgh, PA, based on a complaint of Wayne Boring and his brother, Gary Boring, regarding the improper administration of this fund. Mr. Whalen stated his investigation disclosed no improprieties with the fund.

On April 10, 1981, Foster Monnette Grose, Jr., Vice President, Weaver and Grose, Inc., a division of Weaver Associates, advised the Sick Fund of Local 154, International Brotherhood of Boilermakers, Pittsburgh, PA, is a legitimate fund and is operated as a voluntary contribution plan. Mr. Grose stated the fund was passed by union membership; and, the purpose of the fund is to pay any qualified member who is on sick leave, $100 per month for a specified period of time. Mr. Grose stated the money from this fund does not go into the union treasury.

## FRED GUALTIERI

On May 1, 1981, Roger E. Riedley, Special Agent, U.S. Department of Labor, Office of Inspector General, Philadelphia, PA, advised that over the last few years, his investigation disclosed Gary, Wayne and Vernon Boring, Indiana, PA, have made allegations concerning Fred Gualtieri, Local 154, in that there were forced purchases by union members of the fifty-fifty monthly raffle tickets for the Sick Fund of Local 154; and that for several hundred dollars, Fred Gualtieri helps to arrange for the purchase of Boilermaker membership (union books) in several U.S. cities and in Montreal, Canada. Mr. Riedley further advised that advised him that , PA, is an individual who refers people to Fred Gualtieri to arrange for the purchase of a union book in Montreal, Canada.

Mr. Riedley stated he has no information that Fred Gualtieri actually sells the books, only that he sends people to other Locals to purchase a union book. Mr. Riedley stated in 1978, PA, testified before a Federal Grand Jury, Pittsburgh, PA, which was looking into the book selling activities by union officials.

On May 18, 1981, Wilton, PA, advised PA, refers people to Fred Gualtieri to assist them in obtaining National Transit Mechanic (NTM) books. stated Fred Gualtieri refers people to several union locals throughout the United States and in Montreal, Canada, and that once an NTM book is acquired, it can be exchanged for membership at any local union. stated that he heard that requests the book buying seeker to give Fred Gualtieri $300-500 for the favor, but does not know of anyone who purchased an NTM book through Fred Gualtieri.

On June 5, 1981, AUSA Frederick W. Thieman was advised of the facts in this matter, and AUSA Thieman stated he would review the 1978 Grand Jury proceedings regarding union book buying activities.

On June 18, 1981, AUSA Frederick W. Thieman advised that in 1978, a Federal Grand Jury at Pittsburgh, PA, investigating union book buying activities disclosed no information pertaining to Fred Gualtieri and that the testimony of who was very cooperative, disclosed he was against this practice. AUSA Thieman noted the Labor Department had this investigation for approximately two years without any successful conclusion before referring it to the FBI.

AUSA Thieman advised the facts in this matter present a very weak predicate and there is no solid violation of any Federal statute wherein the FBI would have jurisdiction.

In view of the above, AUSA Thieman stated he would decline prosecution in this matter.

The CHAIRMAN. However, you are surprised at that, then?

Mr. RIEDLEY. Yes, sir.

The CHAIRMAN. You fellows had followed up the best you could under those circumstances.

Mr. RIEDLEY. I thought that we conducted a preliminary investigation to the best our our ability and reported it to our national office, and then went on further to give it to the FBI, which is basically what we are supposed to do under an agreement—I think it was dated in 1960.

The CHAIRMAN. Mr. Riedley, you stated in your July 3, 1980 report of investigation that "It is also noted that several persons contacted in this investigation suggested the U.S. attorney in Pittsburgh, Pa. appears reluctant to pursue prosecution of labor violations." Who are the persons who made this suggestion?

Mr. RIEDLEY. I would rather not get into those individuals.

The CHAIRMAN. Were those informants?

Mr. RIEDLEY. Yes and some other individuals that we contacted who were agents or employees of the Government.

The CHAIRMAN. In other words, even agents and employees of the Government indicated that the then-present U.S. attorney was reluctant to do anything with regard to the prosecution of labor violations.

Mr. RIEDLEY. Yes, sir. I think there were even newspaper articles in Pittsburgh about the reluctance of the attorney to prosecute at least one large Steelworkers' case out there at about that time.

The CHAIRMAN. Therefore, these were some of the complaints that were made to you?

Mr. RIEDLEY. Yes, sir.

The CHAIRMAN. Did that appear to be the case as far as you were concerned?

Mr. RIEDLEY. Well, I really never got to the U.S. attorney in Pittsburgh. We always tried to work through our strike force and the only attorney I was really in contact with out there was Mr. Crawford, and he expressed that reluctance also of the U.S. attorney in Pittsburgh.

The CHAIRMAN. I see. Any particular reason?

Mr. RIEDLEY. It seemed that Mr. Cindrich—who was the U.S. attorney at the time, I am not sure if he is now—had his own construction company out there, and he was also, from what I understand—I do not have this on evidence—he was the attorney for certain labor union funds out there prior to becoming the U.S. attorney. That may be part of the reason. I cannot say for sure.

The **Chairman**. Now you indicated that this confidential informant spoke about one union official in the Pittsburgh area who had Mafia connections or was associated with known Mafia figures.

Mr. **Gudnecht**. Yes, sir, that is correct.

The **Chairman**. What was that union official's name?

Mr. **Riedley**. It was Mr. Fred Gualtieri.

The **Chairman**. Did your investigation indicate that to be true?

Mr. **Riedley**. As best we could determine, yes, sir.

The **Chairman**. This is the end of my questions to you folks for right now. I would like you to stick around, though, and I am going to go to Mr. Stuart Eder, who is the coordinator of the organized crime and racketeering program in the Inspector General's Office of the U.S. Department of Labor, Washington, D.C. If you could stick around, I would appreciate it.

Mr. **Riedley**. Yes, sir.

Mr. **Gudnecht**. Yes, sir

The **Chairman**. Thank you. I would like to thank you for your testimony. I appreciate the work that you did do. I am sorry it was not followed up on.

Mr. **Gudnecht**. Thank you, Senator.

Mr. **Riedley**. Thank you.

The **Chairman**. I personally appreciate it.

Mr. Eder, would you raise your right arm?

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Eder**. I do.

The **Chairman**. Thank you so much.

Mr. Eder, would you summarize for us your responsibilities as coordinator of the organized crime and racketeering program in the Labor Department Inspector General's Office?

## STATEMENT OF STUART EDER, COORDINATOR, ORGANIZED CRIME AND RACKETEERING PROGRAM, OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF LABOR

Mr. **Eder**. I provide general guidance and direction to the special agents in charge of certain Office of Organized Crime and Racketeering field offices.

The **Chairman**. That is in the Eastern Division?

Mr. **Eder**. Yes, that is.

The **Chairman**. As I understand it, all the field officers report to you.

Mr. **Eder**. That is right.

The **Chairman**. OK. Did the Labor Department Strike Force representatives work for the Department of Labor or for the strike force attorney?

Mr. **Eder**. Well, they most definitely worked for the Labor Department. However, we worked very closely with the prosecutors assigned to the U.S. Department of Justice Strike Force.

The **Chairman**. Did you hold your current responsibilities in 1980 when the case involving the Boring allegations was being processed in the Philadelphia Strike Force and in the Department of Labor?

Mr. **Eder**. Yes, I did.

The CHAIRMAN. My understanding is that you were coordinator of this case along with Mr. Robert Nicholson, who is no longer with the Department. Is that correct?

Mr. EDER. Yes, that is correct.

The CHAIRMAN. What was Mr. Nicholson's role?

Mr. EDER. Well, Mr. Nicholson, in addition to his duties as the director and coordinator in charge of certain field office managers, was also responsible for coordinating national investigations through the U.S. Department of Justice Strike Force 18.

The CHAIRMAN. I understand he was the western area director?

Mr. EDER. He was the western coordinator at that time.

The CHAIRMAN. Yes, and he got involved because of the possibility that this was going to be a national case. Is that right?

Mr. EDER. Yes, since the suggestion was that it has national investigative potential, he got involved as the primary reviewer of the particular case.

The CHAIRMAN. It has been my understanding, in truth, that the national program of the Labor Inspector General's office really has never been implemented. Is that correct?

Mr. EDER. Excuse me, Senator. Could you repeat that question?

The CHAIRMAN. The national program of the Labor Inspector General really has never been implemented.

Mr. EDER. If you are referring to setting up a national investigative unit to handle national cases, that is correct. For staffing reasons, we have not implemented that fully.

The CHAIRMAN. Are you familiar with Darwin L. Steelman?

Mr. EDER. Yes, I am.

The CHAIRMAN. He was the special agent in charge of your field office in Philadelphia, as I understand it, upon his retirement last year. Is that right?

Mr. EDER. That is correct.

The CHAIRMAN. Now he was Messrs. Riedley and Gudnecht's supervisor, was he not?

Mr. EDER. That is correct.

The CHAIRMAN. On July 3, 1980, Mr. Steelman wrote your superior, Mr. Ronald Goldstock, then Acting Inspector General, that the Philadephia Office of Organized Crime and Racketeering was closing the Boring file "with the concurrence of the Philadelphia Strike Force attorney in charge." Are you familiar with this Steelman letter?

Mr. EDER. Yes, I am.

The CHAIRMAN. That has already been entered as the Riedley Exhibit No. 10 but we will reenter it again here, without objection.

[Riedley Exhibit No. 10 follows:]

Riedley Exhibit # 10

**U. S. Department of Labor**

Office of Inspector General
Office of Organized Crime & Racketeering
PNB Plaza Building, Suite 900
Fifth & Market Streets
Philadelphia, PA 19106
Reply to the Attention of RFR

July 3, 1980

MEMORANDUM FOR: RONALD GOLDSTOCK
Acting Inspector General

FROM: DARWIN L. SPEELMAN
Special Agent in Charge
Office of Organized Crime & Racketeering
Philadelphia, Pennsylvania

IN RE: Boilermakers Lodge
, Pennsylvania
(Case #31-7244-0001)

The attached relates to several allegations of wrongdoing by Boilermaker Lodges in general and Boilermaker Lodge of , Pennsylvania in particular.

Since October 1979, two informants have contacted the Philadelphia Strike Force regarding Lodge . The first contact was made in October 1979 by an individual who wishes his identity to remain confidential. The informant outlined, in detail, a scheme to purchase a union membership in the Boilermakers.

In January 1980, a second informant, a boilermaker contacted this office and related information regarding union membership buying. The second informant also alleged instances of possible extortion and Taft-Hartley violations by Shop Stewards, Business Agents, and Officers of Lodge . Both informants named , Business Manager of Boilermakers Lodge , as the individual responsible for the illegal activities.

Information supplied by the Bureau of Alcohol, Tobacco & Firearms and the Pennsylvania Crime Commission indicates is an associate of numerous organized crime figures in Pittsburgh, Pennsylvania. was a partner in a restaurant in Indiana, Pennsylvania, with John Bazzano, presently incarcerated in Danbury, Connecticut, on a federal gambling conviction. is also an associate of the Repeppi Family of Pittsburgh, Pennsylvania.

The Philadelphia Office of Organized Crime and Racketeering is closing this file with the concurrence of the Philadelphia Strike Force Attorney in Charge.

In view of the size and scope of a full investigation with the allegations, it is requested that the Office of Inspector General - OCR Coordinator review the file and make a determination on whether to commit resources to a National Office Project.

The CHAIRMAN. The Steelman letter was accompanied by the report of investigation prepared by Messrs. Riedley and Gudnecht. This report of investigation found that three of the Borings' allegations appeared to be of substance. You are familiar with that?

Mr. EDER. Yes, I am.

The CHAIRMAN. These included membership selling, 50-50 monthly plans, and the use of contractor labor to reconstruct a private business property of a union official. Is that right?

Mr. EDER. That is correct.

The CHAIRMAN. The report concluded that "Due to the geographical area involved and the number of persons implicated and the numerous violations, this case is being closed and forwarded to the national office for evaluation." What was your personal evaluation of that case?

Mr. EDER. My personal evaluation was that the hub of the criminal activity alleged was in the Pittsburgh area; that the other local unions that might have been involved were spokes, so to speak, in the possible conspiracy; and because of our limitations relative to certain investigative tools, we felt that the most expeditious way to investigate the matter would have been to use the undercover operative. Since we could not accomplish that, my personal recommendation was that the matter be referred to the FBI, since the FBI had jurisdiction over that.

The CHAIRMAN. Therefore, you referred it.

Mr. EDER. Yes, that is correct.

The CHAIRMAN. In other words, you felt these were substantial allegations, they deserved to be followed up. If you had had your way you would have hired the confidential informant but since you did not have those funds or the authority to do so, you referred it to the FBI. Is that a fair statement?

Mr. EDER. Yes, we felt that the allegations had substance. Therefore, we made the referral.

The CHAIRMAN. I see. According to a June 22, 1981 report of investigation by Mr. Samuel K. Gibbons, a special agent in your San Francisco office, a request for a national case with coordination from your Kansas City office was made on the basis that the investigation of this case "showed a pattern of racketeering." You are familiar with that?

Mr. EDER. Yes, I am.

The CHAIRMAN. The memo stated that Mr. Nicholson denied the request and directed that the case be transferred to the Federal Bureau of Investigation or the U.S. Postal Inspector's office. Did you concur in this decision by your colleague, Mr. Nicholson?

Mr. EDER. Yes, I discussed that particular case with Mr. Nicholson, and the reason for the referral was that there was not a clear organized crime connection. Our mission is limited to cases that involve organized crime's infiltration in unions.

The CHAIRMAN. Let's enter at this point the Gibbons memo as Eder Exhibit No. 1, without objection.

[Eder Exhibit No. 1 follows:]

Edw#1

| U.S. DEPARTMENT OF LABOR<br>Office of the Secretary<br>Office of Inspector General | REPORT OF INVESTIGATION | FILE NO.:<br>71-7299-0001 |
|---|---|---|

**SUBJECT:**
International Brotherhood of
Boilermakers, Iron Shipbuilders,
Blacksmiths, Forgers, and Helpers
New Brotherhood Building
Kansas City, Kansas

**PROGRAM:** OC

**VIOLATION(S):**
18 USC 1341
29 USC 501(c)

**DATE:** June 22, 1981

**BY:** Samuel K. Gibbons

**AT:** San Francisco, CA

**STATUS:** Closed

**Onsite field investigation:** From: June 1980 To: December 8, 1980

**SYNOPSIS:**

1. Basis for this case was the receipt of a telephone call by Special Agent Paul D. McBee, Kansas City OOCR, from Mr. John Blake, General Counsel to the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers of America, AFL-CIO (hereafter International Boilermakers), Kansas City, Kansas. Mr. Blake requested a meeting to discuss alleged improprieties on the part of union members, union employers, and others. Personal attention was provided this case on various dates at Kansas City, Missouri; Kansas City, Kansas; and Philadelphia, Pennsylvania. Additional attention was provided by S/A McBee at Kansas City, Missouri; Kansas City, Kansas; Philadelphia, Pennsylvania; and Pittsburgh, Pennsylvania.

2. On June 6, 1980, Special Agents Paul D. McBee and Samuel K. Gibbons met with Mr. John Blake and Mr. David Lewis, Director, National Transient Division, International Boilermakers, at Mr. Blake's office in the New Brotherhood Building, Kansas City, Kansas. The two union officials explained the detection of a fraudulent scheme involving union membership cards and the collection of union dues through a fictitious local operating on the east coast. The scheme was discovered by International Representatives and confirmed by visits to a union shop. The International officers alleged organized crime involvement with some of the individuals identified with this scheme.

3. Numerous records were obtained through Mr. Lewis. He also provided copies of legitimate receipts and union cards for comparison purposes. Approximately thirty (30) fraudulent union cards were identified throughout various parts of the country.

4. Investigation disclosed the scheme involved a fictitious local which lost its charter in 1977. Individuals were acting as business agents and dues were being collected through two Post Office boxes in Delaware and North Carolina.

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DEPARTMENT OF JUSTICE
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KANSAS CITY, MISSOURI

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OIG 104 (11/78)

GPO 934-988

5. Additional records were requested from the International officers. Interviews were conducted in Philadelphia and Pittsburgh, Pennsylvania. The scope of the scheme appeared to be broadening with printed dues receipts, new areas affected, and more victims identified. The investigation failed to identify organized crime involvement.

6. A request for a national case with coordination from the Kansas City OOCR was made on the basis the investigation showed a pattern of racketeering. Mr. Robert Nicholson denied the request and directed the case be transferred to the Federal Bureau of Investigation or U. S. Postal Inspectors.

7. On December 3, 1980, a meeting was held at the Philadelphia Strike Force with representatives of the U. S. Department of Justice, Postal Inspectors, and the Office of Inspector General, U. S. Department of Labor. S/A Gibbons explained the case and answered questions. The Postal Inspectors agreed to pursue the case by assigning a team of mail fraud specialists.

8. Additional telephone conversations with union officials and Postal Inspectors were conducted. The Postal Inspectors have agreed to keep the Philadelphia OOCR notified of the progress of the investigation. Should the labor violations be substantiated, this service would again become involved with the investigation.

9. Based upon the foregoing, further attention to this case is not deemed warranted.

Samuel K. Gibbons

Samuel K. Gibbons
Special Agent

The Chairman. Now I understand that the national program that Mr. Gibbons spoke of in his memo was not yet off the ground at the time the memo was written. Have you since made any progress in getting it underway?

Mr. Eder. We are attempting to staff that particular function but as of today we do not have an agent assigned to that particular program.

The Chairman. Therefore, it really is not underway.

Mr. Eder. That is correct.

The Chairman. With the alleged purchase of union books coming at locals all over the country, wouldn't the Boring case have been a good one to kick off your national program?

Mr. Eder. Well, we felt that the Boring case had some potential and we regret that because of our limitations we could not pursue it further.

The Chairman. Therefore, if we could statutorially solve your limitations, and if you had had the money, you would have pursued it and you would have pursued it with vigor. Is that right?

Mr. Eder. We would have conducted a much more comprehensive investigation and followed the investigation to its conclusion.

The Chairman. I see. I understand that you have only six employees, including clerical help, in your Washington headquarters but that you have 78 special agents in the field. Couldn't you have borrowed some of those agents from other field offices to help in prosecuting this case?

Mr. Eder. Well, for one thing, Senator, we felt that the agents were all productively involved in cases in their respective jurisdictions. Second, we still had the inherent problem of properly pursuing the investigation through the undercover operative.

One think I would like to clarify is relative to our investigative authority. We cannot undertake investigations unless we receive delegated investigative authority from the Justice Department, and getting back to your early question as to whether we would have pursued it vigorously, of course that is contingent upon receiving the delegated authority from the U.S. attorney in Pittsburgh or some other area where there is possible venue.

The Chairman. In other words, you never did get that delelgation of authority.

Mr. Eder. No, we did not.

The Chairman. In addition, if you had gotten it, it probably would have had to come from the U.S. attorney in Pittsburgh who seemed reticent to prosecute any labor union violations.

Mr. Eder. That is true, and I would like to make one more clarifying statement, if I could.

The Chairman. Sure.

Mr. Eder. Our mission is strictly limited to organized crime investigations involving labor unions, and we support the strike force program. As a matter of policy, we will not assign investigators to nonstrike force cases unless the U.S. Department of Justice Strike Force concurs in that investigative pursuit.

The Chairman. I see. You know, I think one of the questions that has to be asked is, what priorities could have been higher than exposing a scheme that threatens the safety of nuclear powerplants, chemical plants, and other industrial facilities in this country? Therefore, it is a pretty high thing and as I understand it, that is really what we are talking about, Mr. Eder, when you consider the corollary to the illegal card purchases: that is, the allegedly faked tests to cover up for the incompetence of some of these welders and the subpar work that really you would expect such persons to perform once they get a ringer to pass the test for them. Isn't that correct?

Mr. **Eder**. It is potentially a very serious situation.

The **Chairman**. That is a fair question under these circumstances.

Mr. **Eder**. Yes, it is a fair question.

The **Chairman**. Again, the Gibbons memo states that your office referred to the U.S. Postal Inspection Service various allegations about the issuance of phony union cards by a phony union when these allegations were made to your Kansas City office by the International Brotherhood of Boilermakers, Iron Shipbuildiers, Blacksmiths, Forgers, and Helpers. As I understand, the Postal Inspectors did a fine job with that referral. Isn't that correct?

Mr. **Eder**. Yes, that is correct. They were very successful.

The **Chairman**. The perpetrator of this scam, a gentleman who went by the alias of "New York Jim" and operated in Delaware, was indicted in little more than a year after your referral and has since been convicted and sentenced to 4 years in prison. Now why wasn't the case involving a real union or unions selling phony membership cards at extortionate amounts of money also referred to the same Postal Inspectors for their resolution?

Mr. **Eder**. The reason the other matter was not referred to the Postal Inspectors was because there was no indication of possible mail fraud violations. The case was referred to the investigative agency that would have jurisdiction over the alleged violations.

The **Chairman**. I see. If the mails were used in the "New York Jim" case, doesn't it follow that they may have been used in the Pittsburgh case also, since people in Pittsburgh were allegedly being sent all over the country, even to Canada, to get their union cards. I just have to ask this question: Why didn't you at least mention this case to the Postal Inspectors and let them decide whether or not they should get into it or go after it?

Mr. **Eder**. I believe that there was a conference with the Postal Inspectors in Philadelphia and both cases were discussed at that time.

The **Chairman**. I see. Did they decide not to go after it because they just felt that there was no evidence of mail use at that time?

Mr. **Eder**. That is my understanding.

The **Chairman**. On November 28, 1980, your office formally referred the Pittsburgh case to the Federal Bureau of Investigation. Did you contemplate by that referral that the FBI would do additional investigation in order to determine whether or not this case had prospective merit?

Mr. **Eder**. Well, we referred it anticipating that there might be a follow-up investigation but we cannot determine the FBI's priorities.

The **Chairman**. You expected them to follow up and investigate it, didn't you? I mean, these are serious charges. You characterize them as substantial charges.

Mr. **Eder**. We only make referrals if we feel there is possible substance to the allegation.

The **Chairman**. As I noted earlier, the FBI report closing out this investigation on June 24, 1981, quoted Assistant U.S. Attorney Feeman as stating that "The Labor Department had this investigation for approximately 2 years without any successful conclusion before referring it to the FBI." Wouldn't that statement seem to indicate that the FBI thought that your Department had fully investigated this case before sending it over to the Bureau?

Mr. **Eder**. Well, I can't really try to interpret their statement, you know, but we did conduct a comprehensive preliminary investigation before making the referral. However, we did not conduct a 2-year investigation.

The **Chairman**. I see. Well, with regard to that meeting in Philadelphia with the postal people, are you sure there was a meeting in Philadelphia where you discussed this case with the postal people? They do not recall it.

Mr. **Eder**. I am postive that the Postal Inspectors met with our representative in Philadelphia. I am not positive whether they discussed the Pittsburgh case.

The **Chairman**. OK.

Mr. Eder, I would characterize this particular case as a classic example of an informant matter with serious national implications falling through the cracks between two investigative agencies. Would you agree with that?

Mr. **Eder**. Well, in retrospect it appears as though the investigation was closed without any referral for prosecution.

The **Chairman**. Without any justification for closing it, really.

Mr. **Eder**. Oh, I don't want to prejudge the FBI.

The **Chairman**. However, wouldn't you judge it that way if you were sitting up here in my position as chairman of this committee?

Mr. **Eder**. Well, Senator, I have investigated a lot of cases myself and sometimes they just do not turn out the way you anticipate they might.

The **Chairman**. However, there is a case that had turned out. Substantial referral had been made. You believed there was substance to the allegations. There were at least three good allegations. You had 34 witnesses who had not been interrogated and you referred it to the FBI because you expected them to continue the investigation. The fact is, they turned around and did not do it. I would call that falling through the cracks, wouldn't you?

Mr. **Eder**. Well, what I would like to clarify is, there is a big difference between potential substance and evidence that will hold up in court.

The **Chairman**. Well, you never know unless you investigate it and look into it, right?

Mr. **Eder**. That is absolutely correct.

The **Chairman**. Those charges were serious, weren't they?

Mr. **Eder**. Well, we felt they should have been investigated.

The **Chairman**. I know that it seems like I am being a little tough on the FBI here based upon your testimony, and maybe even a little tough on the Department of Labor, although you said you referred it when you had done all you could do on it pursuant to your authority. Therefore, it would appear if your testimony is correct and the testimony of Messrs. Riedley and Gudnecht, that the FBI or the Justice Department, whichever the case may be, has allowed this to fall through the cracks. Would you differ with that?

Mr. EDER. Well, I cannot differ with it but I really cannot respond to that.

The CHAIRMAN. OK.

Since the Borings' allegations were made in 1979, the statute of limitations has not yet begun to run on these alleged crimes. Now that you are aware of the FBI's move to pass the buck back to you, are you giving any consideration to reviving this investigation and making it the first national case?

Mr. EDER. To be quite honest with you, Senator, I still feel very strongly that the proper investigative approach would have been to use an undercover operative or agent, and we still have the same limitations. Moreover, now that it is in the open I really do not think that this particular matter could be investigated any further.

The CHAIRMAN. Well, you still have 30 names on that investigative list who could give you—who could possibly help confirm what the Borings have said and what these other three witnesses have said who testified in front of the screen the other day.

Mr. EDER. Well, I would like to address that a little bit. In a situation like that, the individuals who are buying the books are involved in wrongdoing and they are not really willing and cooperative witnesses.

The CHAIRMAN. They may be if you give them immunity because apparently there are lots of ways of getting people to cooperate with the law in order to finally resolve what appears to be blatant and serious criminal violations of Federal law.

Mr. EDER. Sure. That is something that the Justice Department, of course, would have to authorize, and that is always an option.

The CHAIRMAN. I see. Well, are you willing to request that the Justice Department either get off its dime and do the job in this matter or authorize you to get off the dime and do your job in the matter?

Mr. EDER. What I would like to see is that we have all the tools necessary to do the job.

The CHAIRMAN. In fairness, Mr. Eder, I have to observe that you were clearly hampered in this case, I think, by your inability to support the informant operation proposed by Mr. Riedley. Now have you ever asked the Department of Labor to request legislation to resolve this conflict and allow you to be able to use informants and pay them?

Mr. EDER. The Inspector General has requested that the Department put on its legislative agenda a proposal for law enforcement authority for our agency.

The CHAIRMAN. I will introduce Eder Exhibit No. 2, which is a budget submission for fiscal year 1983. Do you know what the status of your request is at this point?

Mr. EDER. As far as I know, Senator, it is still pending.

The CHAIRMAN. In front of the Labor Department?

Mr. EDER. That is correct.

The CHAIRMAN. Well, I hope you are successful and I assure you that this committee will give every consideration to any proposed legislation they send up, and we will try to get you prompt and efficient granting of your wishes in this matter but I hope that the Labor Department will request that type of submission so that this will never happen again.

Mr. **Eder**. Well, we appreciate your support very much. In fact, I would like to use this as an opportunity to address one of your statements in your opening remarks. I would like to enter into the record an exhibit which summarizes our accomplishments for the period October 1, 1979 to March 31, 1982. In spite of some of our limitations, I think that we have made some pretty important inroads into the organized crime/labor racketeering problem.

The **Chairman**. In this area at all?

Mr. **Eder**. In the book-selling area, Senator?

The **Chairman**. In this Pittsburgh——

Mr. **Eder**. Not in this particular matter. Pittsburgh is not within the Organized Crime Strike Force jurisdiction so it is not an area that has received a lot of our attention.

The **Chairman**. We will be happy to accept that into the record at this point, without objection.

[Note: In the interest of economy, the material referred to was retained in the files of the committee where it may be researched upon request.]

The **Chairman**. I have no further questions for you, Mr. Eder. However, I request that maybe you remain with us until the conclusion of this hearing, when I may have some observations about the manner in which this case was handled by the various Government agencies involved.

Thank you for coming. We appreciate having you here.

Mr. **Eder**. You are welcome.

The **Chairman**. Our next witness is Mr. James Greene, who is Acting Chief of the Branch of Investigations, LMSA, the Department of Labor, Washington, D.C.

Mr. Greene, would you raise your right hand?

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Greene**. I do.

The **Chairman**. Thank you.

## STATEMENT OF JAMES GREENE, ACTING CHIEF, BRANCH OF CRIMINAL INVESTIGATION, LMSA, U.S. DEPARTMENT OF LABOR

The **Chairman**. Mr. Greene, could you briefly explain what LMSA's—which means Labor Management Services Administration—what its investigative mandate or authority includes?

Mr. **Greene**. We have authority for enforcement under titles 2, 3, 4, and 5 of the Landrum Labor Management Reporting and Disclosure Act.

The **Chairman**. Commonly called the Landrum-Griffin bill.

Mr. **Greene**. Yes, Senator.

The **Chairman**. I want to direct your attention to exhibit 1, which staff will provide to you or has provided to you. Two days ago the FBI produced for the committee their June 23, 1981, "letterhead memo" closing their investigation of the Boilermakers matter which had been referred to them by the Inspector General's strike force team. As we discussed already in Mr. Riedley's testimony, this closing memo attempts to justify why the Bureau and an assistant U.S. attorney in Pittsburgh declined to pursue this investigation.

I really just have a couple of questions for your office to make sure we cover all the bases on this report. Two paragraphs in this FBI memo refer to contacts the Bureau had with LMSA's Pittsburgh office. In paragraph No. 3 of this memo, the FBI states that it contacted a Mr. Russell Rock with regard to allegations of this 50-50 raffle scheme that were made by a Mr. French Gauer to LMSA as well as to the Bureau. The Bureau states that Mr. Rock advised them that LMSA had no active investigation going on in this matter, and that Mr. Rock had advised them that they were aware of other Boring complaints but that "none of the allegations by the Boring brothers were ever able to be substantiated."

Now the Bureau is using this item as a memo justifying closing the case, as if to suggest that LMSA has actually investigated and found unworthy the Boring's complaints. The staff interviewed Mr. Rock, who stated emphatically that he did not state or imply to the Bureau that the allegations were without merit but merely that LMSA did not conduct an investigation. Mr. Rock further explained to the staff that "Of course, I did not substantiate, or for that matter refute the charges because this matter is outside the authority of LMSA's investigative ability." He added, in fact, all of these allegations that the FBI report is concerned with were items that LMSA passed on to either Assistant U.S. Attorney Tom Crawford in Pittsburgh or the Inspector General's Strike Force people in Philadelphia. Are these types of investigations outside of the authority or jurisdiction of LMSA's mandate?

Mr. **Greene**. As I understand it, in this pacticular situation yes because basically it would have involved paying an informant and using wiretaps. LMSA policy prohibits either one. For example, I can point to our manual, the Labor Management Standards Enforcement manual, page 6-2 which is in chapter 6, under paragraph 7, "Technical Surveillance": "Technical surveillance is a utilization of electronic or mechanical devices for the purpose of secretly intercepting or recording conversation. Technical surveillance will not be utilized in the course of LMSA investigations."

The **Chairman**. We will, without objection, put that sheet from your management manual into the record at this point.

[Material supplied follows:]

4. Newspaper Articles. Professional personnel should be alert for articles from news media relating to labor-management relations in the territory serviced by the AO concerned or containing information pertinent to current investigations. The latter type of information can be useful in the course of the investigation and, if deemed important for further reference, will be filed in appropriate "zero" files as general intelligence items. Newspaper articles can be the basis for opening an investigation. In this respect the efficient maintenance of an intelligence file relating to unions, their officials, management, labor consultants, or alleged labor racketeers serves two useful purposes, namely:

   a. Provides possible lead information in current or future investigations; and

   b. permits the AA to better evaluate invitations for public appearances, and individuals who, by appointment or otherwise, call upon the AA in matters of possible official interest.

   Articles of significant interest should be sent to the appropriate office of LMSA by the AA.

5. Contacts. The regular or periodic receipt of information from unions, management, and other informed sources is invaluable in the successful investigation of alleged violations. The Investigators will directly seek to establish sources of information in those areas which are particularly within the prescribed mission of the LMSA.

## Surveillances.

6. General Statement of Policy. Surveillance is an extraordinary investigative technique and will not be substituted for the normal and ordinary investigative methods designed to develop credible evidence.

7. **Technical Surveillance.** A technical surveillance is the utilization of electronic or mechanical devices for the purposes of secretly intercepting or recording conversation. Technical surveillances will not be utilized in the course of LMSA investigations.

8. Physical Surveillance. A physical surveillance is the maintenance of a close and constant personal observation of a suspect individual. Such surveillances will not be be conducted without the prior approval of the AA, who first consults with the RA before giving approval.

The **Chairman**. When LMSA receives information that is outside its bailiwick, wouldn't it in fact be proper for LMSA at times to refer the matter, in fact, to the FBI?

Mr. **Greene**. Yes, Senator, either to the U.S. attorney or to the FBI, as the case may be.

The **Chairman**. On page 2 of this letterhead memo in paragraph No. 5, the Bureau again makes reference to a contact with LMSA, pointing out that they questioned an investigator, Michael Whelan, as to his examination into some allegations involving the health and welfare plan of local 154. The memo said that Mr. Whelan advised the Bureau that his investigation disclosed no improprieties with the fund. Did this investigation involve allegations of bookselling?

Mr. **Greene**. Not to my knowledge, Senator.

The **Chairman**. Did it involve 50-50 raffle tickets?

Mr. **Greene**. Again, not to my knowledge.

The **Chairman**. Therefore, this investigation dealt with an unrelated complaint which was looked into by LMSA, which judged that no evidence could be found of impropriety. Is that right?

Mr. **Greene**. That is correct, to my knowledge.

The **Chairman**. In other words, it was an unrelated matter.

Mr. **Greene**. That is correct Senator.

The **Chairman**. One final area we would like to ask you about: The next paragraph on page 2 refers to FBI contact with a management association that maintains the sick fund of local 154. The FBI states that they went to an officer of this management association and asked them if it was a legitimate fund. They do not say that they audited or examined any documents to verify these statements. If your office had an occasion to determine whether or not all was in order with the management association, would you take their word for it?

Mr. **Greene**. Well, I cannot comment specifically on that situation but I would say generally that our investigative techniques generally call for interviewing, as appropriate, witnesses with pertinent information, and if appropriate, conducting an audit.

The **Chairman**. Therefore, normally you would certainly go beyond accepting their word that everything was in order.

Mr. **Greene**. Generally yes, Senator.

The **Chairman**. Thank you for appearing today. We appreciate having this matter on the record.

We will call Mr. Tom Crawford to the stand at this time.

Mr. Crawford, will you raise your right hand?

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Crawford**. I do, sir.

The **Chairman**. Thank you.

## STATEMENT OF THOMAS CRAWFORD, FORMER ASSISTANT U.S. ATTORNEY, PITTSBURGH, PA.

The **Chairman**. Mr. Crawford, you are now being retained as the attorney for Wayne and Gary Boring. Is that correct?

Mr. **Crawford**. That is correct, sir.

The CHAIRMAN. However, you were involved in this case well before you began to represent the Borings, were you not?

Mr. CRAWFORD. Yes, sir.

The CHAIRMAN. As I understand it, you worked the case as the assistant U.S. attorney in Pittsburgh in 1978.

Mr. CRAWFORD. That is correct, 1978 and 1979.

The CHAIRMAN. Right. Did you take this case before a grand jury in 1978?

Mr. CRAWFORD. Partly.

The CHAIRMAN. Would you explain that, please?

Mr. CRAWFORD. Well, I will as far as I can given the regulations in rule 6-e. The book-selling matter was brought up, Senator, by the Borings, I believe initially in April 1978. The Borings were referred to me by Russell Rock from the Labor Department, and when I talked to them they had a number of other allegations as well but among them was the book-selling allegation.

The CHAIRMAN. I see. Now, Mr. Crawford, the FBI report to close this case out on June 23, 1981, stated that "On June 18, 1981, Assistant U.S. Attorney Frederick W. Feeman advised that in 1978 the Federal grand jury in Pittsburgh, Pa., investigating union book-buying activities disclosed no information pertaining to Fred Gualtieri."

Mr. Crawford, close consideration of that wording leads me to conclude that the FBI report suggests that the 1978 grand jury completed an investigation of the Borings' charges without turning anything up with regard to Mr. Gualtieri. Did this grand jury in fact complete its investigation into this matter in 1978?

Mr. CRAWFORD. No, sir. It was our decision at the time to suspend any further presentation to the grand jury due to the availability of another method of investigation.

The CHAIRMAN. Therefore, the FBI report is misleading in that regard. Is that correct?

Mr. CRAWFORD. I do not know what Mr. Feeman told them. I was not there but it would appear——

The CHAIRMAN. Well, if you read the writing it is certainly misleading.

Mr. CRAWFORD. It does not reflect what happened at this time.

The CHAIRMAN. In fact, the grand jury put off further action pending the outcome of the Philadelphia Strike Force's planned use of the confidential informant to infiltrate local 154. Is that right?

Mr. CRAWFORD. Essentially, yes.

The CHAIRMAN. The grand jury investigation had not been resumed as of October 1979 when you left office.

Mr. CRAWFORD. That is correct.

The CHAIRMAN. From what I see, the way the report reads, it would appear that the grand jury investigation was never resumed. Is that right?

Mr. CRAWFORD. I have no knowledge of it ever being resumed. Of course, I was not with the office then.

The CHAIRMAN. Do you know the identity of the confidential informant Mr. Riedley was dealing with?

Mr. CRAWFORD. Yes.

The **Chairman**. Did you ever use this individual as an informant in any of your investigations as an assistant U.S. attorney?

Mr. **Crawford**. Yes.

The **Chairman**. Did he perform well?

Mr. **Crawford**. Yes.

The **Chairman**. Did you pay him for his services?

Mr. **Crawford**. No.

The **Chairman**. Do you know——

Mr. **Crawford**. Neither did the agency, to my knowledge.

The **Chairman**. I see. As I understood it, in essence you considered that he owed the U.S. Attorney's Office.

Mr. **Crawford**. Yes, sir.

The **Chairman**. That is putting it in colloquial terms.

Mr. **Crawford**. Yes, sir.

The **Chairman**. OK. Do you know whether the informant would have worked for free for Mr. Riedley?

Mr. **Crawford**. As I told some people from the Labor Department at the time, I felt that, given the proper encouragement, that he would. When I say, "for free," I do not mean without expenses, or if he was to buy a union book, the money to buy the union book, of course, but I mean without any charge for himself.

The **Chairman**. At the time of Mr. Riedley's negotiations with the informant, you were in fact no longer with the U.S. Attorney's Office. Is that correct?

Mr. **Crawford**. That is correct. I represented the Borings at that time.

The **Chairman**. Would you say that the support by that office for this type of operation diminished when you left to go into private practice?

Mr. **Crawford**. To my knowledge, they have not proceeded on labor cases since then.

The **Chairman**. I see. Did you introduce the informant to Mr. Riedley?

Mr. **Crawford**. Actually, the Bureau of Alcohol, Tobacco, and Firearms did it with my concurrence.

The **Chairman**. However, you told Mr. Riedley about it?

Mr. **Crawford**. I talked to Mr. Riedley about it, sure.

The **Chairman**. To your knowledge, did the FBI contact this individual in an attempt to utilize him as an informant after Mr. Riedley learned from his superiors that he could not mount this operation?

Mr. **Crawford**. Not to my knowledge, nor through me.

The **Chairman**. Do you think the informant would have worked willingly with the FBI?

Mr. **Crawford**. I think he would have worked with the FBI. I do not know how willingly it would have been. Most informants are not overly willing to work with any agency.

The **Chairman**. Of course, you had leverage on him, as I understand it. Is that correct?

Mr. **Crawford**. Yes, the U.S. Attorney's Office did.

The **Chairman**. Yes. As you know, the Labor Department closed out its investigation after its investigators learned that they had no authority to mount an undercover operation. Do you think the law should be amended to permit the Labor Department to conduct this type of operation?

Mr. Crawford. Yes, sir. Particularly in my experience in the Pittsburgh area, that——

The Chairman. Why is that?

Mr. Crawford. Well, in a number of investigations I worked with the Labor Management Services Administration we found the need to conduct that type of operation to sustain prosecutable evidence or good evidence. For instance—and this comes from an entirely different case, it is a matter of record—in circumstances where you have an informant whom you have convinced that he should cooperate, when you get to court you may not have that credible witness and it is a whole lot nicer to have him confirm it with an undercover type of operation.

The Chairman. I see. Did you not tell my investigators that one reason why you would like that law to be amended is because the FBI really has not shown much interest in prosecuting labor cases, especially in the Pittsburgh area? When you were there, as I recall, there was only one man working part-time on labor cases at that time.

Mr. Crawford. At the time I worked in the U.S. Attorney's Office there was one man from the FBI working part-time. I would not say that they had a reluctance to work labor cases. What they really had was a lack of labor case experience in the area, and the Labor Management Service Administration had far more people involved in that particular area.

The Chairman. Therefore, they had a lack of support, two, in that area as well.

Mr. Crawford. Yes.

The Chairman. Mr. Crawford, did the FBI interview either of the Borings after the Labor Department's November 18, 1980 referral of this case to the Bureau?

Mr. Crawford. No, sir.

The Chairman. Not to your knowledge.

Mr. Crawford. Not to my knowledge, and I believe I would know.

The Chairman. Do you know of any principal in this case, including any of the 34 persons on the Borings' list of out-of-town card purchasers, who were interviewed by the FBI following referral?

Mr. Crawford. I know of none.

The Chairman. At Tuesday's hearing we heard testimony from the Boring brothers and a panel of three welders alleging coerced sales of 50-50 raffle tickets by several Boilermakers' Union officials. Are you familiar with this practice?

Mr. Crawford. Yes, sir. We were informed of that, by the way, in 1978 when the Borings initially came in.

The Chairman. I see. Obviously, if these sales were coerced it would be a violation of Federal law. Could you explain the various statutes that you as an assistant U.S. attorney would use as avenues to prosecution for these abuses?

Mr. Crawford. The Government would have a choice of statutes to pursue, depending on the investigative results of the case. It might be a Hobbs Act violation; that is title 18, section 1951, if you coerce somebody involved in business, in interstate commerce. It may well also be a violation of a number of reporting and disclosure acts, and that depends on what is done with the money. You have to find out what was done.

Specifically, title 29, section 431 requires—and this is in section b-2—requires receipts of any kind and the sources thereof to be recorded. That is an LMRDA or Landrum-Griffin violation. If the funds were earmarked— as I have heard but did not know at the time—for an employee benefit plan, that is, either a pension plan or a sick pay plan or whatever, it would need to be reported—at least as I interpreted the law—under title 29, section 1023-b-1 and b-3, which requires a statement of receipts and disbursements during the preceding 12-month period, aggregated by general sources and applications. It would appear that—both of those, by the way, have criminal enforcement statutes.

The CHAIRMAN. Well, even if these sales are not coerced, they would still be in violation of other Federal statutes such as the illegal gambling operations statute and the others that I have mentioned.

Mr. CRAWFORD. Yes, sir. It would appear to be in violation of title 18, section 1955 as well.

The CHAIRMAN. Would these funds be illegal even if they are reported to the Labor Department?

Mr. CRAWFORD. Yes an illegal gambling business would be illegal, regardless of who reported it to whom.

The CHAIRMAN. In addition, it would be an unfair labor practice as well under present labor law.

Mr. CRAWFORD. The unfair labor practice—we call it a ULP—would result from basically requiring nonunion members to pay money into a fund to support only union members, yes.

The CHAIRMAN. To your knowledge, has local 154 of the Boilermakers made reports of these funds to the Department of Labor?

Mr. CRAWFORD. Not to my knowledge, but they may have since—I do not know.

The CHAIRMAN. One final question, Mr. Crawford: In your opinion, are elements of organized crime operating in these illegal book-selling and 50-50 raffle ticket sales by Boilermakers Union locals?

Mr. CRAWFORD. It would appear to be organized in local 154. This was not the case that I handled with the strike force but it was handled with the organized crime strike force in Pittsburgh when it existed, so presumably elements of organized crime were involved. I did not investigate that.

The CHAIRMAN. Do you believe organized crime was involved in this matter or in these matters?

Mr. CRAWFORD. It would appear to be. Yes, sir.

The CHAIRMAN. Thank you, Mr. Crawford. We appreciate your coming.

Let me ask you one other question. One clarifying point for the record: You said Russell Rock forwarded his information to you. Is that correct?

Mr. CRAWFORD. He referred the Borings to me and told me about some of the information.

The CHAIRMAN. I see. I want the record to reflect that point clearly. The FBI chose to color their contact with Rock as implying that there was nothing of substance to the Boring allegation. We hear from you, however, that Rock passed these along to you.

Mr. CRAWFORD. Yes, sir, for several reasons, by the way.

The CHAIRMAN. One of them was that he believed there to be substance there.

Mr. CRAWFORD. Obviously. He would not send them over if he did not. None of the agencies do. Also, some of the material in the Borings 'allegations was beyond his capacity to investigate. Generally speaking, for instance, the illegal gambling business would be beyond Mr. Rock's investigative jurisdiction. We have heard other things that are, too.

The CHAIRMAN. Thank you, Mr. Crawford. I appreciate your coming.

Mr. CRAWFORD. Thank you, sir.

The CHAIRMAN. Our final witness today is Mr. Thomas F. Johnson, Assistant Postal Inspector in Charge of the Philadelphia Division, U.S. Postal Service.

Mr. Johnson, will you raise your right hand?

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. JOHNSON. I do.

The CHAIRMAN. Mr. Johnson, we are happy to have you here but before you testify, I want to point out that while your testimony will not address the Pittsburgh allegations, it will document the fact that the Boilermakers Union memberships are being sold at extortionate prices, and just as importantly, it shows what an aggressive investigative agency can do when it puts its mind to it.

Why don't you go ahead with your statement?

## STATEMENT OF THOMAS F. JOHNSON, ASSISTANT POSTAL INSPECTOR IN CHARGE, PHILADELPHIA, PA.

Mr. JOHNSON. Thank you, Senator.

I am Thomas F. Johnson, Assistant Postal Inspector in Charge of the U.S. Postal Inspection Service, Philadelphia, Pa. I appreciate the opportunity to appear before you today to discuss our mail fraud investigation of a scheme involving the sale of fraudulent union membership cards, also known as books, in Delaware, New Jersey, and Pennsylvania.

The Postal Inspection Service is the investigative arm of the U.S. Postal Service. It has investigative jurisdiction of all violations of the Federal criminal laws relating to the Postal Service. It is responsible for internal audits of the Postal Service and provides security for Postal facilities and employees. Postal Inspectors investigate criminal acts involving attacks on the Postal Service and its employees, including theft of mail, armed robbery, burglaries, and assaults on postal employees. Additionally we investigate offenses involving criminal misuse of the postal system for purposes such as mailing of bombs, transporting pornography, and fraudulent schemes.

I supervise the Fraud and Prohibited Mailings Section in the Philadelphia Division, which investigates mail fraud and false representation cases such as the one we are discussing today. The geographic area of our investigative responsibility is the eastern half of Pennsylvania, the southern portion of New Jersey, and the State of Delaware.

The chronology of our part in this particular investigation begins on December 30, 1980. On that date, our representative on the Organized Crime Strike Force in the Eastern District of Pennsylvania, Thomas Valent, met with the following law enforcement representatives: Mr. Quentin Brooks, a Philadelphia Strike Force Attorney; Special Agent in Charge Samuel K. Gibbons of the Department of Labor, Kansas City, Mo.; Special Agent Darwin Steelman, Department of Labor Strike Force, and Special Agent Melvin Gudnecht, Department of Labor, Philadelphia Strike Force.

Mr. Gibbons presented a case which had been investigated for possible violations of the Federal labor statutes. The case appeared to have possible mail fraud violations, in that the scheme involved the illegal sale of union membership cards by mail to individuals seeking membership in the local union lodges of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers. Mr. Gibbons advised that an individual identified as James Whritner and also using many other names was conducting the scheme within the Philadelphia Division's area of responsibility.

Preliminary investigation disclosed that James Whritner, also known as James Dougherty, was identifying himself as the business agent for local lodge 327 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers in Wilmington and Newport, Del. He was accepting mail for this lodge at Post Office Box 3177, Wilmington, Del. This box, which was assigned to Tri-State Tank and Boiler Repair, was opened on February 16, 1980 by James Whritner. An official investigation was initiated on February 6, 1981.

Further investigation and surveillance disclosed: One. Local lodge 327 had once been an active lodge. However, due to declining membership in the international, the international union withdrew the charter and for all intents and purposes the lodge no longer existed.

Two. Mr. Whritner was also using the address of 2 Richey Avenue, Collingswood, N.J., as a business office and location to receive mail supposedly for local lodge 327.

On April 28, 1981, Mr. Whritner was served with a Federal grand jury subpoena to produce fingerprints and handwriting and to be photographed. By this time inspectors had interviewed numerous individuals who had purchased the union cards through local lodge 327 and found the charges to be $500 to $1,000 per card. Many of these individuals did not learn the cards were fraudulent until they presented them on a job and the employer checked at the international headquarters in Kansas City. These individuals would then lose their jobs since they could not establish union membership.

Even after his receipt of a Federal grand jury subpoena, Mr. Whritner continued to sell union cards. On July 8, 1981, Inspectors initiated a request to withhold mail going to Post Office Box 3177, Wilmington, Del., and 2 Richey Avenue, Collingswood, N.J., pursuant to 39 United States Code 3005, which authorizes mail stop orders against schemes for obtaining money through the mail by means of false representations.

Pursuant to this request, the Postal Service Law Department filed a complaint against these addresses before an administrative law judge on October 8, 1981. In addition, on October 28, 1981, the Postal Service obtained temporary restraining orders to withhold mail pursuant to 39 United States Code 3007 in the judicial districts of Delaware and New Jersey. On November 10, 1981, final restraining orders were issued on the two addresses by the U.S. district court.

However, Whritner then moved his operation to the Eastern District of Pennsylvania and began selling fake cards under the guise of local lodge 19 at 9152 Ellie Drive, Philadelphia, Pa. A complaint to stop mail on this address was filed on December 9, 1981, and the order issued on January 14, 1982.

On December 21, 1981, James Whritner was indicted in Federal court in the District of Delaware for this scheme. He was charged with violation of 20 counts of mail fraud, 18 U.S.C. 1341, and one count of use of a fictitious name, 18 U.S.C. 1342. It was estimated that he had realized in excess of $200,000 through the sale of fraudulent union memberships.

He was arrested on December 22, 1981, and entered a not guilty plea. On March 10, 1982 he changed his plea to guilty on one count of mail fraud, 18 U.S.C. 1341. On April 21, 1982, Mr. Whritner was sentenced to 4 years imprisonment.

Senator, I would be happy to answer any questions you have.

The CHAIRMAN. Thank you for your testimony, Mr. Johnson. It is self-explanatory and thorough, so I will have just a few questions. First, some of our other investigative agencies seem to have been unwilling or unable to interview more than a handful of the 34 alleged purchasers of union cards at extortionate prices. You state that your Inspectors interviewed numerous individuals who purchased fraudulent cards. How many such purchasers did your inspectors interview?

Mr. JOHNSON. A total of 50 individuals were interviewed, 25 in person and 25 by telephone.

The CHAIRMAN. Were the card purchasers located only in and around Wilmington, Del. or over a widespread geographical area?

Mr. JOHNSON. The majority of the card holders were located in Delaware, Pennsylvania, New Jersey. They were also in Ohio, West Virginia, and Tennessee. However, we executed a search warrant and we found that card purchasers had been from 36 States.

The CHAIRMAN. How many heavy States were there?

Mr. JOHNSON. The heavy States were the previous six that I had mentioned.

The CHAIRMAN. Five to seven States. Therefore, I would observe and I think you would also, that this was pretty widespread.

Mr. JOHNSON. The victims were widespread. The scheme, though, was very centrally located.

Mr. CHAIRMAN. You state the prices charged for the phony cards ranged from $500 to $1,000. Did you just use the $1,000 as an average figure at the high end of the range or was $1,000 the highest amount charged?

Mr. JOHNSON. A thousand dollars was the maximum we found.

The CHAIRMAN. I see. Since we are talking here about phony cards issued by a phony union, the legitimate cost of a card of course is not a factor. However, is it your understanding that the $500 to $1,000 range of prices for these cards that you mentioned in your testimony is greatly in excess of the legal charge for such bona fide cards?

Mr. JOHNSON. Our investigation and discussion with the national union indicated that I believe a maximum amount charged for a union card is $200. The average price with most lodges is about $50.

The CHAIRMAN. Was the Postal Inspection Service ever advised of the similar book-selling allegations that existed in the Pittsburgh case that we have been discussing with previous witnesses on Tuesday and this morning?

Mr. JOHNSON. Not to my knowledge.

The CHAIRMAN. Do you think you should have been advised?

Mr. JOHNSON. I think that if the potential mailings were there and if the mailings met the requirements for a viable mail fraud, it would have been up to the discretion of the Department of Labor but we would have looked at it.

The CHAIRMAN. Mr. Johnson, the case you successfully prosecuted, it seems to me clearly demonstrates the pressures that exist upon boilermakers to obtain union cards so that they may obtain work. In view of the broad geographical spread of card purchasers that we have heard about over the last several days, do you think that a nationwide investigation of this practice by the Labor Department would be likely to yield many additional mail fraud cases of the "New York Jim" variety, type of case?

Mr. JOHNSON. This particular scheme that we investigated seemed to indicate that the victims were widespread but the scheme itself was centrally located. I have not heard of any other schemes that would indicate any widespread type operation of it recurring.

The CHAIRMAN. Of course, if there is such widespread demand for cards that a "New York Jim" using a phony union can attract business from 36 States, then it is logical that there must be a lot more of these types of transactions going on out there.

Mr. JOHNSON. It is feasible.

The CHAIRMAN. Thank you so much. We appreciate you coming.

Mr. JOHNSON. Thank you, Senator.

The CHAIRMAN. We appreciate your testimony and the work that you have done.

Let me just conclude here today, as you know, I have mentioned the fact that Mr. Gaultieri has not been willing to testify today. We will look forward to having his written testimony within 2 weeks from this date, and we hope that it will be promptly delivered, and we hope it will be sworn as well, under penalty of perjury.

In evaluating the testimony we have heard today and Tuesday, I think the following points simply have to be made: One, there is in my opinion no doubt that illegal sales of Boilermaker Union cards have been widespread in this country for the last several years. What one might call a black market in these cards has been nurtured by illegal labor practices whereby local unions fail to refer nonunion members for work. This is in violation of section 8 of the National Labor Relations Act. If such discrimination against nonunion workers were not going on, the prices being commanded for union cards in today's market could simply not be obtained.

Putting first things first, I think the Labor and Justice Departments should launch a full-scale investigation into the extent of discrimination against nonunion laborers by locals of the Boilermakers Union and perhaps others.

Two, there are strong indications that welding tests are being faked to qualify persons who could not otherwise pass the welding tests. The Nuclear Regulatory Commission and State regulatory commissions should consider the requirement for positive identification at test sites, such as matching photographs of the person to be tested. For construction projects that are not regulated by Government agencies, the companies themselves should consider such a system for their own protection.

I might add that it does not take any brains to figure out that since a number of these nuclear jobs, powerplant jobs, are cost-plus jobs, it is an advantage for both the union and the employer or contractor to have all the boilermakers they can on that job, whether they are working or whether they are not, whether they are good or whether they are not, whether their cards are valid or whether they are not, whether their cards have been obtained through extortion practices or whether they have not. I can say that that might be one of the reasons why the costs of nuclear powerplants have escalated so monumentally over the last number of years.

Three, there is evidence that a large number of unqualified welders may already be in the labor force. The Nuclear Regulatory Commission and other agencies should retest a sample number of welders at each work site and conduct more thorough testing at sites where an inordinate number of welders in the sample fail the test.

Four, allegations of union corruption made by the Boring brothers of Indiana County, Pa., and I might add, by three other witnesses who were protected by the screen, were given short shrift by Federal agencies involved in this case. Certainly the Labor Department investigators on the Philadephia Strike Force were hindered by their lack of legal authority to pay for the informant operation to infiltrate the Pittsburgh local which was alleged to be the hub of the illegal traffic in union book-selling. However, I question whether these investigators' superiors in Washington used proper judgment in failing to make this a national case, and we have raised that issued today. This is particularly important in view of the observation from Mr. Eder's field investigators that the U.S. attorney in Pittsburgh appeared to be reluctant to pursue prosecution of labor violations.

The greater blame for this failure of our prosecutorial apparatus, however, appears to lie with the Federal Bureau of Investigation. After the Labor Department went as far as it could go with this case, it formally referred the case to Justice. Whether Labor went far enough in view of other resource demands and the problem with mounting the informant operation is, of course, arguable. However, what is clear is that the Labor Department specified in the referral documents that it had not thoroughly investigated the case, even though its investigators thought the case had substance. This left no doubt that more investigative work had to be done. Despite this clear message to the FBI, however, the Bureau shutdown this case with a cavalier memo stating that it was declining prosecution because the Labor Department had been working the case for 2 years without a successful conclusion before referring it to the FBI. The FBI sought to make it appear that the Pittsburgh grand jury and the Labor Management Services Administration investigated and found no merit to the allegations but our witnesses at today's hearing revealed that this was simply not the case.

Personally, I find this situation intolerable. I think it should never be repeated. I can assure you that this committee is going to be looking closely at the relationship between the Labor and Justice Departments throughout the course of other oversight investigations that we will have underway this year. We will not permit these agencies to ping-pong these important cases back and forth with no one accountable for letting these cases die without investigations.

If these investigators are not being held accountable by their agency heads, I can assure you that they are going to be called to account at this witness table.

Finally, we are dealing with human lives here. We are dealing with people who have had the courage to come out and speak out in public. We are dealing with people who have been extorted in purchasing union cards, rightly or wrongly. Certainly it is wrong to purchase cards that they know are improper cards, and it is certainly wrong for somebody who is not a welder or even qualified to be a member of the Boilermakers' Union to be purchasing a card and acting like that person is working on important jobs, or any job for that matter, especially nuclear powerplants where welding happens to be a very, very important function.

What I am saying is that this is abominable but you have to think about the 50-50 raffle tickets. We have had a number of witnesses testify that not only were they forced to buy the raffle tickets which is a form of extortion but that they did not believe that the moneys were going to the sources or to the purposes that were listed when they were forced to buy the tickets, which of course is a form of embezzlement, and that they believe that the people doing this have ties with the underworld in this country and that they have been ripping off those funds for their own purposes, such as they are, and that they could lose their jobs if they did not purchase these raffle tickets.

Now I do not think any worker, union or nonunion, or any worker in any other form should be forced to purchase raffle tickets or any other type of device such as that. Second, I do not think any union should be selling raffle tickets unless there is a thorough accounting made and disclosed to the Department of Labor. I suggest the Department of Labor should immediately look into this because apparently it is a widespread system all over many areas of the East, or at least it has been alleged to be. I think it ought to be stopped or it ought to be legitimated within the framework of the law, if that is possible.

If in fact the funds do go to take care of those who have health problems and sickness and welfare problems, that is another matter, but there is evidence here before this committee that maybe some of those funds do, maybe some of them do not. There is also evidence that it is believed by the witnesses who have appeared here, at least the way I have interpreted it, that the other 50 percent certainly does not go to those who win under the raffle scheme.

These are serious charges. Last but not least, it has been alleged here by representatives of the Federal Government that there have been allegations made that Mr. Gaultieri has close ties with the underworld. I think that has to be investigated because I do not think any union leader should have close ties with the underworld. I think it is tough enough for the workers in this society to do the work that they have to do, working in the environment that they have to work—and having worked with boilermakers and welders, I know how tough their jobs are—without having to deal with people who are unscrupulous as their union leaders. I think it is time that we root out those unscrupulous people and get them out of the unions. Whether Mr. Gaultieri fits in that category or not remains to be seen, but those are the allegations, and all I can say is, they should be refuted or proven, one way or the other.

I am hopeful that the Justice Department and the Labor Department and any other related area of Government or agency of Government will get on the ball and start doing something about these violations, which apparently are all over the place and not just in Pittsburgh.

[Material supplied for the record follows:]

# STATEMENT FOR THE RECORD

Submitted by the INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LOCAL LODGE 154, AFL-CIO

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Subject:

LEGISLATIVE OVERSIGHT HEARINGS

CONDUCTED BY

SENATOR ORRIN HATCH, CHAIRMAN

Dated: June 10, 1982.

Washington, D.C.

The statements of fact recited in this report are extracted from the transcript of record and exhibits submitted at the Senate Labor and Human Resources Committee hearings held on May 11 and 13, 1982, in Washington, D.C., and from the business records of Local Lodge 154 and Weaver Associates, Inc., professional administrators for the joint trusteed Funds of Lodge 154 and the Sick and Distress Fund.

All statements on Boilermakers Lodge 154's position set forth herein, relative to the subject areas of legislative oversight inquiry, are subscribed to and affirmed by each of the officers, agents and members of Lodge 154 whose names are set forth on page 15 herein.

On May 3, 1982, officers of Local Lodge 154 Boilermakers Union in Pittsburgh, Pennsylvania, were informed of scheduled hearings which were to be held by Senator Orrin Hatch in Washington, D.C., on May 11 and 13, 1982.

Upon request, staff representatives for Senator Hatch informed counsel for Lodge 154 on May 4, 1982, that the hearings would cover three basic subjects: (a) alleged use of unqualified welders on nuclear power plant projects and other construction projects; (b) alleged book selling by certain Local Lodges in various parts of the country and (c) 50/50 Sick and Distress Fund.

On May 5, 1982, Lodge 154 representatives and the Sick Fund Committee Chairman met with investigators on the staff of Senator Hatch and submitted evidence on the three subjects mentioned above.

Representatives of Lodge 154 attended the May 11 and May 13, 1982 hearings, which Senator Hatch conducted under the auspices of the Senate Labor Committee - legislative oversight function.

Following an examination of the transcript of record of the May 11 and 13, 1982 hearings and the exhibits submitted, Lodge 154 files its statement for the record with the hope that an objective and unbiased analysis will be made of the competent, relevant evidence by all members of the Senate Labor Committee prior to the issuance of the Senate Labor Committee's report on legislative recommendations in this matter.

Local Lodge 154, its officers and executive board are willing to cooperate with any member of the Senate Labor and Human Resources Committee in connection with its authority to conduct public hearings for the legitimate purpose of recommending the passage of legislation in areas of national concern.

It is imperative, however, that these hearings conducted by Senator Hatch comport with the basic rules of evidence and insure equal and fair treatment to all persons or organizations appearing before him.

Too often, history has demonstrated and recorded abuses in the democratic process of legislative inquiry by certain members of the House and Senate for their own personal or political recognition.

While we recognize that a Senate or House inquiry is not governed by the strict rules of evidence applicable to the judiciary branch of our government, we trust that notions of due process and fair play will prevail in these proceedings.

# I

## WELDING TESTS AND ALLEGATIONS OF UNQUALIFIED WELDERS ON CONSTRUCTION PROJECTS

The Nuclear Regulatory Commission conducted an extensive investigation pursuant to allegations filed by Gary Boring in November of 1979, with the NRC. The Gary Boring letter of 12/29/79, and the investigation report of the NRC are filed as Boring Exhibit 5 and are a part of this record.

Investigations were conducted at Beaver Valley units 1 and 2, Three Mile Island 1 and 2, and Limerick Stations 1 and 2, all located in Pennsylvania. The six nuclear facilities were investigated on site, as well as the Borings who made the allegations regarding unqualified welders. In its report dated 4/8/80, the NRC investigators concluded that, "None of the allegations investigated were found to be substantiated and no apparent items of non-compliance with regulatory requirements were identified."

Each allegation Gary Boring made was specifically identified and a finding was reported in each case, as follows: [See NRC Investigation Report 4/8/80 of record]

1. The NRC investigation found no evidence that welders were not properly qualified at the nuclear power plant sites located at Beaver Valley, Three Mile Island and Limerick stations.

2. The NRC does not rely on the unions to provide crafts who are qualified. To the contrary, the owner of the nuclear facility and the contractor are required to assure through training and testing that crafts are qualified to perform the assigned tasks on the job site.

3. Gary Boring did not name any person or persons for whom he stated he improperly took welding tests on any construction site, nor did he substantiate his "book buying" allegations with the names of anyone.

4. The allegations made by Gary Boring in November of 1979 before the NRC relate to his work experience at Three Mile Island in September, 1972, June 1972 and July 1973. All welding test certificates issued during these periods were examined by NRC investigators following Boring's allegations and no discrepancies were found. The Boring allegations could not be substantiated.

Contrary to the mistaken impression created by the Chairman of this Committee based upon the unsubstantiated allegations of the Borings and unidentified persons, the welding tests at the construction site are not controlled by the craft unions that refer workmen to the site.

Lodge 154 requests that the Nuclear Regulatory Commission and this Chairman demand from the Borings and the three unidentified welders who testified on May 11, 1982, the names of the persons for whom they took welding tests, the construction site locations, the names of the contractors for whom they worked and the dates these events occurred.

It is necessary that these general allegations be pinned down, rather than left hanging in the air. We all know full well that Three Mile Island generates fear and anxiety in the minds of the American people and attracts national public attention. Perhaps this is why Gary Boring made his allegations of "unqualified welders" working at Three Mile Island six years after he worked there.

He has accomplished his purpose by attracting attention to nuclear power plant facilities. Now he must produce specific proof to the NRC or publicly revoke his accusations because enough fear has been generated about nuclear power plants after the happening of the Three Mile Island incident.

It is important to note for this record that the Three Mile Island incident of March, 1979 was not caused by defective welds or by the use of craft union welders on that construction project.*

Lodge 154 has called the NRC Regional Office in King of Prussia, Pennsylvania and has requested a second investigation into this matter following the Borings' and three unidentified welders' allegations which they made on May 11, 1982.

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*After checking the referral records of Local 154 it has been discovered that Gary Boring has never worked at the Beaver Valley nuclear power plant facility which is located within the geographical jurisdiction of Lodge 154 in Western Pennsylvania.

We trust this Chairman will cooperate by furnishing any competent, relevant evidence it can obtain from witnesses on this matter to the NRC and other appropriate governmental agencies for investigation.

In the interest of fairness and objective disclosure on this vital subject, Boilermakers Lodge 154 requests the Chairman call NRC representatives to testify before this Committee concerning their past investigations into the Boring allegations and place on this record the details of their findings. The NRC representatives were not called to testify at either the May 11 or May 13, 1982 hearings. Why?

The public has a right to know whether the Borings and the three unnamed welders, who testified before this Committee on May 11, 1982 are distorting the facts or telling the truth.

Lodge 154 will cooperate with this Senate Committee in this area of national concern for the safety of us all.

## II

## "SELLING" OR "BUYING" UNION MEMBERSHIP BOOKS

There is no dispute concerning the payment of initiation fees and dues for membership in Local Lodges. The relevant question is whether a person paid more than the maximum initiation fee permitted by the Constitution and By-Laws. In certain Local Lodges across the country membership can be easily obtained, while in others, membership is restricted.

In areas of high employment, there are many requests for membership in the Local Lodge encompassing that geographical location. Consequently, individuals who cannot acquire membership in a Lodge situated in a highly desirable work area, go elsewhere to obtain union membership and then transfer into the Local Lodge of their choice under the rights provided for in Article XXXII of the International Union Constitution.

These automatic transfer rights granted by the Constitution have resulted in many transfers of members from Local Lodges across the United States and Canada to Lodge 154, as well as to other desirable Local Lodges where employment is high.

If any person who is a member of a Boilermakers Lodge states that he or she paid more than the maximum initiation fee and dues permitted by the International Constitution and By-Laws, let that person come forth and identify the person who charged the excessive fee, the official position of that person and the date and place of occurrence.

There may well be instances of an overcharge by certain individuals over the past five years. If there is direct evidence of this allegation, then that person should be questioned to determine if he or she pocketed the money or deposited the same into the Local Lodge treasury.

Any overcharge which is deposited in the Local Lodge treasury does not constitute a criminal offense; however, if any portion or part of initiation fees or dues are converted to one's personal use, this act, indeed, violates existing federal labor laws, namely the Labor Management Reporting and Disclosure Act of 1959, as amended.

The Borings (Gary and Wayne), over the past five years have alleged, and presently allege, that they have thirty-four (34) names of persons who obtained membership books from Local Lodges in the United States and Canada, and they believe those persons paid in excess of the maximum permitted by the Constitution and By-Laws of the International Union.

When requested by investigators for various governmental agencies (DOL and NRC) for the 34 names, the Borings were unable to support their accusations, suspicions or beliefs. Why have they not, in 1982, produced the names of those persons to the Chairman of this Committee for the record?

There is no way to check unnamed persons against the records of the International Union and Local Lodges. At the very least, it is important to know the names of the persons with whom these individuals did business. Absent this evidence, the air of suspicion remains. Speculation, conjecture or supposition have no proper place in these hearings and, therefore, should not be permitted by the Chairman.

The record of the May 13, 1982 hearing does, in fact, disclose that on June 6, 1980, the International Brotherhood of Boilermakers called the FBI office in Kansas City and reported the detection of a fraudulent scheme involving union membership cards and the collection of dues through a fictitious or defunct Local operating in Delaware. [See Report of Investigation dated 6/22/81 DOL at pp. 51-52 of Senate Hearing held on 5/13/82]

The U. S. Postal Inspectors investigated the complaints filed by the Boilermakers Union and indicted an individual by the name of James Whritner, a/k/a James Dougherty, operating out of Wilmington and Newport, Delaware. On April 21, 1982, Mr. Whritner was sentenced to four years imprisonment on mail fraud charges [18 U.S.C.§1341]. The investigators concluded that the victims of this mail fraud scheme were widespread but the scheme itself was centrally located. [Johnson testimony, p. 90]

As a direct result of leads provided by the International Union to the FBI and U. S. Postal Service, an individual was indicted and convicted.

If there are other individuals engaged in the fraudulent sale of union books, as the Borings and unidentified welders who testified at the May 11, 1982 hearing suspect, let them come forth with the names of those persons who were allegedly defrauded and let the investigation continue so that those persons who are accused of any impropriety in this regard can be brought forth to account for their actions.

There has never been any allegation by the Borings or anyone else that Local Lodge 154 has charged initiation fees or dues in excess of the maximum permitted by the International Union Constitution and By-Laws.

If anyone presently desires to accuse any officer, agent or representative of Lodge 154 Boilermakers Union in Pittsburgh, Pennsylvania, of "book selling", let the accuser come forth and back up his accusations with fact, not suspicions or beliefs. Due process demands no less of a minimum standard of proof in these Senate hearings.

Moreover, if we desire to adhere to basic principles of fair play and impartiality, then we must clearly separate and identify testimony and statements on this record which are based upon hearsay, opinions, beliefs or assumptions from competent, relevant evidence.

## III

## 50/50 RAFFLE FOR THE SICK AND DISTRESS FUND

Contrary to the Chairman's opinion or his belief which is based upon the beliefs or suspicions of the Borings and the unidentified persons who testified on May 11, 1982, the 50/50 raffle for the Sick and Distress Fund is not being "ripped off" nor does it have any ties with the "underworld". [p.95 of 5/13/82 hearing record]

On May 4, 1982, when the Lodge 154 was asked by the staff investigators for Senator Hatch to respond to the Borings' allegations regarding the 50/50 Sick Fund raffle, representatives of Lodge 154 and the Sick Fund Committee Chairman came to Washington, D.C., the next day and offered evidence on the complete operation of the Sick Fund. In fact, we requested the staff investigators to check all of the Sick Fund financial records and audit reports which are administered by Weaver Associates, Inc., in Pittsburgh, Pennsylvania.

Further, the record discloses that the Department of Labor had investigated the Boring allegations regarding the Sick Fund, and Health and Welfare Fund several years ago and found no improprieties and no illegal conduct with regard to any of those Funds.

Lodge 154 again issues a challenge to the Borings or to any federal agency or Senate Committee to investigate these Funds.

It is quite simple to suspect persons of embezzling money from corporations, banks, unions, or from political campaign funds; however, it is more serious and important, under our laws, when suspicion is replaced by direct accusations of wrongdoing against specified persons who handle or administer those funds.

There is no evidence on this record to support the beliefs or suspicions expressed by the Borings or the unnamed witnesses who testified on May 11, 1982, relative to the Sick and Distress Fund; therefore, no opinions or conclusions should be drawn from that testimony adverse to those organizations or persons connected with that Fund.

With reference to allegations that the Borings or other unnamed persons were forced to buy raffle tickets, the Sick Fund Committee and Lodge 154 demands the names of those persons who are alleged to have forced individuals to buy these tickets, the approximate dates of these incidents and the locations where they occurred.

To this date, the Borings in their multitude of charges filed over the past seven years with the NLRB, DOL and FBI, have failed to produce substantive evidence to support their suspicions or beliefs regarding the Sick and Distress Fund and/

or the Health and Welfare Fund.

In fact, investigations conducted by DOL in 1980 and 1981 resulted in findings of no improprieties.

Again, Lodge 154 challenges the Borings or anyone else to come forth with the names of any person whom they desire to accuse of embezzlement, extortion or any other criminal act relating to these funds. Until there is actual proof of "rip-offs" or "embezzlement" these unsupported accusations or opinions must be withdrawn by those persons making them on this record.

Alvin Van Gysel

Alvin Van Gysel,
Chairman-member

Joseph G. Garritan

Joseph Garritan, President

Fred G. Gualtieri

Fred G. Gualtieri,
Business Manager

James P. Quinn

James P. Quinn, Fin.-Sec.

William A. Lawlor, Sr.

William A. Lawlor, Sr.,
Asst. Business Agent

Counsel for Lodge 154

COUNTY OF ALLEGHENY : SS:
COMMONWEALTH OF PENNSYLVANIA :

Before me, a Notary Public, appeared the above named persons and upon their oath, they have affirmed that the statements contained herein are true and correct to the best of their knowledge, information and belief.

Sworn to and subscribed
before me this 4th day
of June, 1982.

Deborah L. Skrzynski
Notary Public

DEBORAH L. SKRZYNSKI, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES NOV. 25, 1983
Member, Pennsylvania Association of Notaries

The CHAIRMAN. With that, we will recess these hearings and look forward to the written, notarized statement, under penalty of perjury, from Mr. Gaultieri.

[Whereupon, at 1:55 p.m., the committee recessed, to reconvene at the call of the Chair.]

# OVERSIGHT OF DEPARTMENT OF LABOR'S INVESTIGATION OF ORGANIZED CRIME INVOLVING UNION WORKERS

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THURSDAY, MAY 27, 1982

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
*Washington, D.C.*

The committee met, pursuant to notice, at 9:50 a.m., in room 4232, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman of the committee) presiding.

Present: Senator Hatch.

## OPENING STATEMENT OF SENATOR HATCH

The CHAIRMAN. Today's hearing focuses primarily on the Office of the Solicitor of Labor and the manner in which it chooses to interpret our Nation's labor laws.

As we demonstrated in hearings of February 23 and 24 on the Southern Nevada Culinary Workers Pension Fund, the Solicitor's Office dismissed very strong recommendations from the Office of Enforcement and followed a course of action which allowed Morris Shenker to delay the repayment of some $45 million in principal and interest on illegal loans made to him by the trustees of the Culinary Fund. The matter we will discuss today has disturbingly similar overtones.

Our present hearing will demonstrate, as did the Shenker hearing, that when presented with alternative legal strategies for pursuing and prosecuting serious labor law violations, the Solicitor's Office invariably takes the least painful course of action, or at least has up until the last year, especially with respect to corrupt union leaders or organized crime figures. The resulting failure harms the public interest.

The case at hand here involves the Jacksonville, Fla., local of the International Longshoreman's Association, No. 1408, and its president, Mr. Landon Williams. In 1979, Mr. Williams was convicted in U.S. district court in Miami of accepting some $22,000 in bribes for labor peace. Testimony at Williams' trial indicated that part of the actual bribe money was generated when Williams allowed an employer to deliberately understate pension contributions so that the money could be paid to Williams. Furthermore, the testimony in that Miami trial included an undercover payoff under controlled circumstances by law enforcement officials that established firsthand evidence that Williams had indeed been accepting bribes.

Following Williams' conviction, the Miami area office of the Department's Labor Management Services Administration, an arm of the Office of Enforcement, specifically asked that the Labor Department file litigation to remove Williams from his trusteeship of eight different pension and welfare plans associated with Local 1408. At the very least, the area office wanted restrictive sanctions placed on Williams to insure the protection of union assets prior to the outcome of Williams' appeal.

Enter the Solicitor's Office. As occurred in the Morris Shenker case, that office was presented with two options, one tough and one tolerant. In the Shenker case the Solicitor's Office adopted a course of prolonged litigation against Shenker rather than pursuing a swift foreclosure on the Dunes Hotel and other known Shenker assets. A trial has not yet begun in that case, even though the lawsuit was filed by the Solicitor's Office some 5 years ago. Thus, the Solicitor's Office's handling of the *Williams* case was like the rerun of an old movie, the "Bail Out of Morris Shenker" movie.

This is the choice that confronted the Solicitor's Office in the *Williams* case: Section 411 of the Employee Retirement Income Security Act, ERISA, does not require removal of convicted union officials from fiduciary responsibility until all appeals are exhausted. However, other provisions—namely, sections 406(b)(3), 409, and 502 of ERISA—authorize the Secretary of Labor to sue for a fiduciary's removal upon breach of his fiduciary responsibilities.

In 1979 the Miami area office recommended a section 502 removal action against Williams. This recommendation was endorsed by the regional office in Atlanta and the Office of Enforcement in Washington. In my opinion as an attorney, this course of action was tailormade for the *Williams* case.

For reasons that are difficult to understand, the Solicitor's Office has steadfastly resisted the Office of Enforcement's proposal. Could any breach of fiduciary responsibility be more serious than a union president's allowing an employer to shortchange union pension fund contributions in order to pay the union leader a bribe? I think not. What is especially disturbing about the *Williams* case is that the paper trail left by the Solicitor's Office shows almost no legal analysis of the alternative strategy suggested by the Miami area office: that is, sue to remove Mr. Landon Williams from his posts under sections 406(b)(3), 409, and 502 of ERISA.

The Solicitor's Office, in what some have characterized as an arrogant and cavalier manner that seems to typify their actions in the past—or at least has in this and the Shenker cases—merely flung this recommendation aside with an observation that Williams was acquitted in an income tax case involving the same bribery charges. Therefore, the Solicitor's reasoning went, Williams would be a more credible witness in an ERISA removal suit against him than the Government's witness in the successful Miami bribery prosecution would be. "Therefore, do not file an ERISA suit because it is at least conceivable that you could lose."—that, to me, appeared to be the Solicitor's thinking at the time.

We have also learned that the Labor Department allowed six other convicted ILA officials in southeastern port cities to remain in their fiduciary roles for at least a year following their convictions. It appears that the Department of Labor has no idea of how many other convicted leaders of the ILA or other unions may still be serving following their convictions.

In addition to Mr. Williams, the following ILA officers were found to be continuing in their official positions despite criminal convictions: George Barone, international second vice president, Local 1922, conviction date, September 1, 1979, for racketeering, extortion, prohibited payments, and tax fraud; William Boyle, international vice president, Local 1922, convicted September 1, 1979, for racketeering, extortion, kickbacks as plan administrator, and prohibited payments; George W. Dixon, international vice president, local 1410, convicted on January 26, 1979, for embezzlement of union funds; Romia Johnson, bookkeeper, ILA Welfare and Pension Administration—the local I do not know at the present time—as I understand it he was convicted on May 18, 1978, of embezzlement of employee benefit plan funds—here is a bookkeeper; Cleveland Turner, on the executive board of the Atlantic and Gulf Coast District Local 1922, convicted on September 1, 1979, for racketeering and prohibited payments; and James Vanderwyde, coordinator of the Atlantic and Gulf Coast District Local 1922, convicted on the same date for racketeering, prohibited payments, and extortion.

What is even more remarkable is the fact that except for the Atlanta region at Labor, which took the time and trouble to compile a list of convicted ILA leaders still serving in fiduciary roles, no other region of Labor has done the same with respect to ILA or any other union. The Labor Department has therefore chosen to follow a policy of inaction and ineptitude that increases the vulnerability of the labor union rank and file to abuses by unscrupulous officials. It is a travesty upon the protection and enforcement functions the Department has had delegated to it by the Congress.

It has also come to my attention that the committee is in serious disagreement with the Solicitor's Office, not only over the handling of the *Williams* case but over its significance. The Deputy Associate Solicitor, Mr. Robert Eccles, told my staff last week that this case was "anything but momentous." Certainly the Solicitor's Office has handled the case that way. It declined to make a section 502 case against Williams simply because Williams was acquitted of tax evasion charges regarding the bribe in 1980.

Now there could have been many reasons for the acquittal other than the one surmised by the Solicitor's Office—that the credibility of the witness whose testimony was crucial to the successful Miami bribery prosection was automatically tainted because of the acquittal in the *Jacksonville* tax case. You would think the Solicitor's Office would study the transcript of the tax trial carefully before making its decision not to litigate but my staff learned that the Solicitor's Office never reviewed the transcript at all.

Let me make this observation to the Solicitor's Office: Some of you, or some in the Solicitor's Office, appear to me to be doing some extremely sloppy lawyering that is hurting the public interest. I think these deficiencies have to be corrected, and I think they have to be corrected in a hurry, or we are going to find a lot more of these hearings and an inordinate amount of your and my time spent up here on the Hill in the remainder of this year.

Now there is one final significant concern I have about the *Williams* case: Mr. Williams may have been a model union leader since his conviction in 1979 on the bribery charge. Then again, he may not have been. We do not have any way of knowing because the Labor Department has not audited that union's books in the 3 years since Williams' conviction. In many similar cases, convicted union officials have continued their raids on union treasuries pending appeal of lower court convictions. For instance, Bernard J. Rubin, an official of the Laborers Union of South Florida, misued $2 million of union funds between the time of his 1975 conviction on bribery charges and his resignation from office in 1977.

Because of the leniency towards crime and criminals continually displayed by some in the Soliticor's Office, I think the *Williams* case presents an overwhelming rationale for passage of the proposed Labor Racketeering Act of 1982, of which I am a cosponsor. Mr. Ryan, I am going to be very interested in your testimony today as to the compromise because I understand that you will be quite critical of the compromise, and in all honesty I will probably agree with you on that. Let's just see where we are.

I think it is very important that we have from you just whether or not this bill is really going to do what I am hoping it will do and what you are hoping it will do, and anybody who is interested in law enforcement and antiracketeering hopes it will do. Therefore, in particular I am interested in what you have to say in that regard.

Now this bill provides for mandatory removal of any union officials from a fiduciary capacity upon conviction in any State or Federal court of a felony or a misdemeanor involving employee benefit funds. That bill, pending in this committee, should be approved at the earliest possible opportunity. I hope that we can resolve whatever criticisms you have of the bill.

The Solicitor's Office has in the past, in my opinion, consistently abused its discretion in some of these matters. That discretion must be removed, I think, from that Office's hands and I think needs to be removed forthwith so that it becomes automatic. Otherwise, millions of working people will be victimized by unscrupulous union leaders in certain unions. That is not to find fault with the many honest union leaders across this country who do try to do what is right, and of course I think they are the majority.

Time permitting, we will question Labor Department officials on two other matters this morning: first, the Solicitor's Office's failure to force collection of $89,000 in loans and rents owed the welfare fund of local 945 of the Teamsters Union by an enterprise in which fiduciaries of the fund may have had a financial interest. Local 945, by the way, is notorious for its organized crime connections. Four of the fiduciaries of this fund have been convicted of taking bribes for investing union funds in a bank's certificates of deposit.

The second issue we will address today is a recent decision by the Internal Revenue Service to dismiss all ERISA claims against Morris Shenker in return for a $199,000 tax settlement. Shenker has used the language of the settlement as a means to seek dismissal of the Labor Department's $45 million lawsuit against him for defaulting on the Southern Nevada Culinary Workers Pension Fund loans. Fortunately, he was unsuccessful in a motion for summary dismissal but this is no indication that he might not win this point in a full trial.

We had hoped to question various IRS officials about their motives in accepting the language of Shenker's settlement. Unfortunately, the IRS is legally blocked from testifying or cooperating with this committee because Mr. Shenker has refused the committee's request that he waive his rights of confidentiality in regards to the settlement, so that the IRS could testify today. Mr. Shenker also has declined our repeated requests to appear before this committee.

Now our first witness today will be Mr. T. Timothy Ryan, Solicitor of Labor, and Mr. Jeffrey Clayton, the Administrator of the Pension and Welfare Benefit Program. Both of these officials will present an overview of their respective offices' involvement in the *Jacksonville Longshoremen and Teamsters Local 945* cases. They will be followed by Messrs. William Sexton, Jesse Day, and Norman Goldberg, who will testify about the ILA case, and Mr. Robert Gallagher, who will testify about Teamsters Local 945.

Could I have you all rise, and we will just swear you in?

Do you swear, under penalty of perjury, that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RYAN. I do.

Mr. CLAYTON. I do.

Mr. GOLDBERG. I do.

Mr. DAY. I do.

Mr. SEXTON. I do.

The CHAIRMAN. Thank you.

Now we had invited Mr. Williams to testify today but he declined on grounds that he felt the hearing was focused not so much on his actions or alleged actions but on the Labor Department's handling of his case. Therefore, that will explain that.

Mr. Ryan, let's turn to you for your statement at this time.

## STATEMENT OF T. TIMOTHY RYAN, JR., SOLICITOR OF LABOR, U.S. DEPARTMENT OF LABOR

Mr. RYAN. Mr. Chairman, I am pleased to be able to appear before you again as part of this committee's continuing oversight activities concerning the Department of Labor's administration and enforcement of the Employee Retirement Income Security Act [ERISA]. Before turning to the main portion of my statement, I would like to make two points which I have made in the past before this committee and which I believe are worthy of repetition.

I want to first reassure you, Mr. Chairman, as well as the other members of the committee, that we in the Department of Labor take no responsibility more seriously than our obligation to enforce ERISA in order to ensure the statutory protections for the millions of employee benefit plan participants and beneficiaries. Plan assets must and will be protected, and individuals should not be allowed to serve plans if they have been found unworthy of the trust placed upon them.

The second preliminary point that I wish to reiterate, Mr. Chairman, is that I believe you do us in the Department a service by holding these oversight hearings. We do make mistakes, and we are grateful when you help us concentrate on those areas which need to be improved. You also provide us with a public forum which enables us to get across a message that ERISA will be enforced, and enforced vigorously. There should be no doubt in anyone's mind on this point.

We want the pension and welfare plan world to know that the Secretary has impressed on us his feelings on the importance of tough enforcement of ERISA. We want the pension and welfare plan world to know that Assistant Secretary Dotson and the administrator for the pension and welfare benefit program, Jeffrey Clayton, have taken a number of steps which will greatly enhance our enforcement efforts. We want those people to know that I, as Solicitor of Labor, have increased significantly the number of attorneys who are assigned to ERISA litigation. So we are grateful to you for giving us this opportunity to get our message across.

The CHAIRMAN. Mr. Ryan, I wonder if you might summarize your testimony? You can read it if you desire but I think it would be better if you could summarize it.

Mr. RYAN. I will give it a good shot, Mr. Chairman.

The CHAIRMAN. OK.

Mr. RYAN. I would now like to turn to a brief discussion of the two cases which you have indicated you wish to examine during this hearing. Accompanying me are a number of individuals who are intimately familiar with these cases, and they are available for your questioning.

The first case has to do with Teamsters Local 945 pension and welfare funds. This matter arose out of a loan and lease of plan property, both executed in 1975, between local 945 and a company called Coterie, a restaurant owned by a person who had been involved with the trustees in a scheme for investing plan assets in certificates of deposit.

Mr. Chairman, my prepared text gives you the additional facts which are necessary for a clear understanding of this case. It came to my attention as you will remember from the last time I testified before your committee, because of what we considered to be a possible statute of limitation problem. As you will recall from my previous testimony, we discussed the extent to which this might be a problem in the Department.

In preparation for that hearing, it appeared to me that the statute of limitations might have run in this case during the period it was in the Solicitor's Office. After discussions with the Inspector General of the Department of Labor regarding the possibility of IG review of this matter, I directed my executive assistant, Karen Ward, to conduct an investigation of the handling of this case. She concluded that there was not a statute of limitations problem with respect to any of the violations which were the subject of the referral to the Solicitor's Office, specifically the failure to recover unpaid rent and defaulted loans. In sum, Mr. Chairman, although my Executive Assistant in her review pinpointed some problems in the handling of this case, I do not believe that there were any serious mistakes in judgment that would affect the outcome.

I would now like to address the second case, which relates to the ILA Local 1408 in Jacksonville. In this case Mr. Landon Williams was and continues today to be a trustee of the Jacksonville ILA. In 1979 he was convicted of violations of the RICO statute and of section 302 of the Taft-Hartley Act. He has appealed these convictions to the Federal Court of Appeals in New Orleans, the fifth circuit.

As presently written, the disqualification mechanism of section 411 of ERISA is not triggered until the exhaustion of the appeals process and the conviction is final. Therefore, Mr. Williams, as I previously noted, continues to serve as a trustee due to the fact that the fifth circuit has not ruled on the appeal.

It was originally proposed that the Department file suit against Mr. Williams, alleging a violation of the fiduciary responsibilities provision of title 1 of ERISA so as to remove him from office. We in the Solicitor's Office first decided not to file such a suit in the summer of 1980. We made this decision for a number of reasons.

First and foremost, we are hoping, as we were hoping at that time, that the fifth circuit would soon issue a decision on Mr. Williams' appeal which will affirm his conviction. Assuming this ends the appeal process, section 411 will come into play and he will be disqualified from serving as a trustee. Because we believe the conviction will be upheld, we thought it would be the most efficient use of our limited resources to use this mechanism to obtain Mr. Williams' removal. We did not expect the appeals process to take as long as it has.

Further, the amount of money in question is only $9,000, and in relative terms this is a small amount in comparison to many other very large cases in the Solicitor's Office. It has been suggested that a title 1 suit against Mr. Williams would be a "silver platter" case for us because he had been convicted of the criminal charges. However, I would note that Mr. Williams was acquitted in March 1980 of income tax evasion, charges which were based on the very same facts. Therefore, this case could not be considered a sure victory.

In summary, all of the factors taken into consideration together led the people involved to come to the conclusion that it would not have been an efficient use of resources to bring Mr. Williams to trial for a third time when the amount of money involved is de minimis, and when we are hopeful that the end result we are seeking—removal of Mr. Williams—will be accomplished by an affirmance of his conviction. Now let me state for the record that that decision was made under my predecessor but I agree with that decision.

I would like to digress from my discussion of these two cases to stress to the committee that the removal of Mr. Williams could be effectuated now, right now, if the Congress would pass legislation on the lines of S. 1785, the Labor Management Racketeering Act. We were disappointed to learn that the committee failed to mark up this bill, as was scheduled for this past Tuesday. This Congress is in its concluding months, and we are concerned that there is not much more time left for the enactment of what we consider to be one of the most important pieces of labor reform legislation affecting American workers to be considered by the Congress in a number of years.

Mr. Chairman, we do not just want this legislation—we need it in order to effectively safeguard the rights and benefits of employee benefit plan participants and beneficiaries and members of labor organizations. One of the most important aspects of the legislation is that the disqualifications from serving in certain positions relating to employee benefit plans and labor organizations would be triggered at the time of conviction. We unequivocally support this change in ERISA and LMRDA.

I would further reiterate to this committee that both the Labor and Justice Departments took the position in our February 3 statements to this committee that the legislation should be clarified to insure that it applies to individuals who had been convicted of the disqualifying crimes before the date of the enactment. An individual convicted 3 days or 2 to 3 years before the date of enactment—such as Mr. Williams, the person we are having this hearing about today—should not be allowed to continue to serve until the end of the disqualifying period.

Just as you said, Senator Hatch, we are very, very chagrined, not only in the Department of Labor but in the Department of Justice, that this committee is now at a point where the subcommittee is marking up this bill without making it clear that it would apply to individuals who have been convicted before the date of enactment. In the past when we have appeared before this committee you have been very gracious. Senator Nickles has been very helpful and in private meetings everyone has told us, "If you want to get this area cleared up, let us know what we can do to help you." Well, we have told you what we need: We need this bill, and we need it to be applied so that it will apply to individuals like Landon Williams. Quite frankly, the bill that is coming out of subcommittee is very disappointing to us because it does not apply to people like Landon Williams, and I do not have to go through the litany of other individuals who would be off scot-free—that is, individuals who have been convicted previously. I think that that is a real shame if it comes out that way. I will pledge to work with you or any other member of the committee to make sure that this bill comes out of committee and goes to the floor of the Senate in a form which will assist the Department of Labor and Department of Justice.

The **Chairman**. I might mention that we need to get it out of the committee. I am not quite sure about the compromise on the final bit of legislation but if that is the compromise, then I have to share your chagrin and I have to share your dissatisfaction with that bill. There is no reason to let anybody who has been convicted, any labor union leader who has been convicted of these specific crimes, to continue to serve as though nothing happened.

I have to admit that is going to be a serious problem for me. I also have to admit that we have a very difficult committee here, and sometimes it is very difficult to get anything out of this committee unless there is such a watered-down compromise that it may or may not be as valuable as we would all like it.

I do not see how any union leader can argue that people who have been convicted of serious crimes should continue in office, representing the union. Unfortunately, they do, apparently behind the scenes, and they have their supporters on this committee. However, I do think that at least you would have a prospective bill—is that correct—as you interpret what has been the compromise?

Mr. **Ryan**. As I understand it, it would apply prospectively. It may not handle the issue which brings us here today.

The **Chairman**. However, that would still be a step in the right direction, even if that is all this committee can do at this time.

What you seem to be saying here is, if we put that bill out prospectively, we really ought to try on the floor to put language in that would remove those who have already been convicted prior to the bill.

Mr. RYAN. Yes, Senator, and I guess I would state again that I would be very, very surprised if the members of this committee, after understanding the significance of this bill, would vote to have it not apply to individuals who have previously been convicted.

The CHAIRMAN. Well, I think you have to put yourself in the subcommittee chairman's position. It is better to have a prospective bill than none at all. We have not had anything in this area, and if that is what it takes to get the bill out of committee, then I suspect he has no choice, and I suspect that is probably what it takes.

Therefore, I share your concern and I will raise that issue today. We are planning on marking up that bill at 2 o'clock, although I have questions whether we will be able to get a quorum.

Mr. RYAN. Well, we would appreciate your assistance and I guess my only final comment on this, Senator, would be that just as we in the Department of Labor, those working for Mr. Clayton or those working for me in the Solicitor's Office—must be accountable for our actions taken in the past, 3 years ago, or our actions taken 3 days ago, the committee must also be held accountable. We have come up here. We have asked for your assistance on this matter. We are here again on the same issue involving exactly the same type individual, and we just really need your help on this.

The CHAIRMAN. It really would be a crime if this committee failed to take care of people who currently stand convicted. I have made a fuss about it in my statement today. These people are still serving. We have evidence in certain cases where those who served after their convictions continued to rip off the union members and the workers. I agree it would be a real pity if we cannot get that restrengthened as we report out the bill.

However, I also have to tell you that I would rather have a prospective bill than none at all, and do my best to amend it on the floor of the U.S. Senate and hopefully in the House, because I think we have to do something in this area. However, I would appreciate your help because if we cannot do it in committee—and I certainly would like to see it done—if we cannot do it in committee then we are going to have to really put on a drive on the floor, it seems to me, to add that language.

Mr. RYAN. Well, we will give you all the help that you need, Senator.

[The prepared statement of Mr. Ryan follows:]

STATEMENT OF T. TIMOTHY RYAN, JR.
SOLICITOR OF LABOR
U.S. DEPARTMENT OF LABOR
BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

MAY 27, 1982

Mr. Chairman and Members of the Committee:

I am pleased to be able to appear before you again as part of this Committee's continuing oversight activities concerning the Department of Labor's administration and enforcement of the Employeee Retirement Income Security Act (ERISA). Before turning to the main portion of my statement, I would like to make two points which I have made in the past before this Committee, but which I believe are worthy of repetition.

I want to first reassure you, Mr. Chairman, as well as the other Members of the Committee, that we in the Department of Labor take no responsibility more seriously than our obligation to enforce ERISA in order to insure the statutory protections for the millions of employee benefit plan participants and beneficiaries. Plan assets must and will be protected, and individuals should not be allowed to serve plans if they have been found unworthy of the trust placed upon them.

The second preliminary point that I wish to reiterate is that I believe you do us in the Department a service by holding these oversight hearings. We do make mistakes, and we are grateful when you help us concentrate on those areas which need to be improved.

You also provide us with a public forum which enables us to get across our message that ERISA will be enforced and enforced vigorously. There should be no doubt in anyone's mind on this point. We want the pension and welfare plan world to know that the Secretary has impressed on us his feelings on the importance of tough enforcement of ERISA. We want the pension and welfare plan world to know that Assistant Secretary Dotson and the Administrator for the Pension and Welfare Benefit Program, Jeffrey Clayton, have taken a number of steps which will greatly enhance our enforcement efforts. And we want those people to now that I, as Solicitor of Labor, have increased significantly the number of attorneys who are assigned to ERISA litigation. So we are grateful to you for giving us this opportunity to get our message across.

I would now like to turn to a brief discussion of the two cases which you have indicated you wished to examine during this hearing. Accompanying me are a number of individuals who are more intimately familiar with the specific issues in which you are interested. They are available for questioning.

The first case concerns the Teamsters Local #945 Pension and Welfare Funds. This matter arose out of a loan and a lease of plan property, both executed in 1975, between the Local #945 Pension and Welfare Funds Plan and a company called Coterie, Inc., a restaurant owned by a person who had been involved with the trustees in a scheme for investing plan assets and certificates of deposits in violation of Section 404 of the Act. In 1977, the trustees of the plan wrote off the sum of $39,000 in uncollected rents. In addition, Coterie defaulted on the loan, and the trustees failed to take action to recover the $50,000 involved in that transaction. It was the trustees' failure to attempt to recover these amounts which was the basis for the program's referral of the case to the Division of Plan Benefits Security of the Solicitor's Office. The Division, after consideration of the referral, advised the program individuals on April 8, 1981 of its decision not to institute litigation in this matter.

This case came to my attention as one which might involve a statute of limitations problem -- that is the statute may have run before the Department filed suit. As you will recall from your previous oversight hearing, we discussed the extent to which this might be a problem in the Department. In preparation for that hearing, it appeared to me that the statute of limitations might have run in this case during the period it lay in the Plan Benefits Security Division. After discussions with the Inspector General regarding the possibility of an IG review of this matter, I directed my Executive Assistant, Karen I. Ward, to conduct an investigation of the handling of this case. She concluded that there was not a statute of limitations problem with respect to any of the violations which were the subject of the referral to the Solicitor's Office, specifically the failure to recover unpaid rent and the defaulted loans.

As I understand your concern, Mr. Chairman, you are questioning why the Solicitor's Office declined to institute litigation in this case. The Supervising Attorney on the case stated a number of reasons for the decision. First, one of the primary objectives for bringing this case would have been the removal of the trustees of the plan. However, the union trustees had been criminally convicted of violating the Racketeer Influenced and Corrupt Organizations Act (RICO), and these convictions became final in the spring of 1981. As a result, they were disqualified from serving as trustees by operation of Section 411 of ERISA. Therefore, the point was moot. Secondly, one set of possible claims against the trustees --which were not raised in the referral for litigation--could have been subject to a serious statute of limitation defense. And, third, the amount of recovery which might have been expected on the remaining claim was speculative and was not thought to warrant the expenditure of limited litigation resources.

In sum, Mr. Chairman, although my Executive Assistant in her review pinpointed some problems in the handling of this case, I do not believe that there were any serious mistakes in judgment that would affect the outcome.

I would now like to address the second case which relates to the International Longshoremen's Association Local 1408 in Jacksonville, Florida. In this case, Mr. Landon Williams was, and continues today to be, a trustee of the Jacksonville International Longshoremen's and Warehousemen's Pension, Welfare and Vacation Plan. In 1979 he was convicted of violations of the RICO statute and of Section 302 of the Taft-Hartley Act. He has appealed these convictions to the Fifth Circuit Court of Appeals. As presently written, the disqualification mechanism of Section 411 of ERISA is not triggered until the exhaustion of the appeals process and the conviction is final. Therefore, Mr. Williams, as I previously noted, continues to serve as a trustee due to the fact that the Fifth Circuit has not ruled on the appeal.

It was originally proposed that the Department file suit against Mr. Williams alleging a violation of the fiduciary responsibilities provision of Title I of ERISA so as to remove him from office. We first decided not to file such a suit in the summer of 1980. We made this decision for a number of reasons.

First and foremost, we are hopeful that the Fifth Circuit will soon issue a decision on Mr. Williams' appeal which will affirm his conviction. Assuming this ends the appeals process, Section 411 will come into play, and he will be disqualified from serving as a trustee for a period of five years. Because we believed the conviction will be upheld, we thought it would be the most efficient use of our limited resources to use this mechanism to obtain Mr. Williams' removal. We did not expect the appeals process to take as long as it has.

Further, the amount of money in question is only $9000, and in relative terms this is a small amount in comparison to many other, very large cases in our office.

It has been suggested that a Title I suit against Mr. Williams would be a "silver platter" case for us because he had been convicted of the criminal charges. However, I would note that Mr. Williams was acquitted in March 1980 of income tax evasion charges which where based on the very same facts. Therefore, this case could not be considered a sure victory.

In summary, all of these factors, taken into consideration together, led the people involved to come to the conclusion that it would not have been an efficient use of our resources to bring Mr. Williams to trial for a third time when the amount of money involved is de minimus, and when we are hopeful that the end result we are seeking -- removal of Mr. Williams -- will be accomplished by an affirmance of his convictions. Let me state that I agree with that decision.

I would like to digress from my discussion of these two cases to stress to the Committee that the removal of Mr. Williams could be effectuated now if the Congress would pass legislation on the lines of S. 1785, the Labor Management Racketeering Act. We were disappointed to learn that the Committee failed to mark-up this bill as was the schedule for this past Tuesday. This Congress is in its concluding months, and we are concerned that there is not much time left for the enactment of what we consider to be one of the most important pieces of labor reform legislation affecting American workers to be considered by the Congress in a number of years.

Mr. Chairman, we do not just want this legislation--we need it in order to effectively safeguard the rights and benefits of employee benefit plan participants and beneficiaries and members of labor organizations. One of the most important aspects of the legislation is that the disqualifications from serving in certain positions relating to employee benefit plans and labor organizations would be triggered at the time of conviction. We unequivocally support this change in ERISA and the Labor Management Reporting and Disclosure Act.

I would further reiterate to this Committee that both the Labor and Justice Departments took the position in our February 3 statements to the Labor Subcommittee that we believe that the legislation should be clarified to insure that it applies to individuals who had been convicted of the disqualifying crimes before the date of enactment. An individual convicted three days, or two-to-three years before the date of enactment, such as Mr. Williams, should not be allowed to continue to serve until the end of the disqualifying period.

So Mr. Chairman, we urge this Committee to act as expeditiously as possible to see that these very important protections are enacted into law.

Mr. Chairman, this concludes my prepared statement. The individuals whom you requested to attend this hearing are here, and we will attempt to answer any questions you or the other Members of the Committee may have.

Thank you.

The **Chairman**. I agree with you, it would be a real crime in and of itself if we do not resolve these problems with regard to already convicted people.

Thank you. I appreciate your comments and I appreciate your advice to the committee. I think, "Touche." We are moaning and groaning about the Solicitor's Office and what happens down there. You have asked for a tough bill. I think it is justified. The facts justify it. I think the committee owes the public and certainly these union men and women in this country a tough bill.

Unfortunately, the fact that I feel that way does not always carry in the committee.

Mr. Clayton, I wonder if you could summarize in, say, 5 minutes or less? I know it is not fair but your written statements will be placed in the record as though fully delivered. It will help the committee this morning. I was on a Department of Labor problem before I came over here. That is why I was late.

## STATEMENT OF JEFFREY N. CLAYTON, ADMINISTRATOR, PENSION AND WELFARE BENEFIT PROGRAM, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY JESSE L. V. DAY, INVESTIGATOR, MIAMI AREA OFFICE; AND WILLIAM D. SEXTON, ATLANTA REGIONAL ADMINISTRATOR, LABOR MANAGEMENT SERVICES ADMINISTRATION

Mr. **Clayton**. No problem, Mr. Chairman.

I, too, am pleased to be here today. I would like to commend you and the efforts of your committee to root out labor corruption. I want to pledge my support and the support of my staff in your efforts, and I also want to express my appreciation for the sensitivity that your staff and yourself have had to these problems as they relate to ongoing cases and things of that nature. I think your approach has been responsible and I am sure with your help we will be able to accomplish some of the things that we recognize need to be done in this area.

The **Chairman**. Thank you.

Mr. **Clayton**. With me today on my immediate left is Jesse Day, a supervisory investigator from Miami, and on his left is William Sexton, the Atlanta regional administrator. Most of the actions in this particular case took place before I had my present position, and I will leave my written statement which I will submit for the record, as far as the general overview of the facts and circumstances of these two cases in the Office of Enforcement. I would, however, like to briefly describe how the Office of Enforcement handles cases.

When cases which have previously been referred to the Solicitor's Office are returned to the Office of Enforcement, that is, OE, with specific actions recommended, the OE staff involved with these cases meets with the office director and the division chief and considers the recommended course of action. They specifically review the conclusions and recommendations contained in the Solicitor's memorandum. If there is no disagreement or question with respect to the recommendation, the case is referred by memorandum back to the originating field office for the appropriate action in line with the recommendations contained in the response from the Solicitor's Office. If the field office has no objection, the case will then proceed accordingly.

If, however, the OE staff does not agree with the Solicitor's recommendation or further clarification of their position is deemed necessary, the case will be referred back to the Solicitor's Office with a memorandum explaining our disagreement or question. Similarly, if the involved field office disagrees with the course of action passed on to it by OE, they are free—in fact, they are expected—to return the case to the national office for reconsideration.

Using this procedure, it is my desire to see to it that all confusion or disagreement with respect to a case from any source will be surfaced quickly and hopefully resolved. This kind of approach is particularly important for me since I am generally not involved in the initial decision to refer cases to the Solicitor's Office, and therefore, I need the background knowledge that only the permanent OE staff can provide. However, I receive a copy of the transmittal memorandum of each case which is referred to the Solicitor's Office and I review that memorandum.

In fact, if no disagreement is expressed during this process, I generally have no reason to question the disposition of the case. It is also important to recognize that LMSA now has the ultimate say on which cases go forward and which cases do not. If there is a disagreement between the Solicitor's Office and the program, LMSA as the client makes the final decision on whether to proceed. We obviously, of course, weigh the Solicitor's recommendation heavily in making that decision and I have to compliment the Solicitor on cooperating in this particular area.

Basically, if there is a conflict between the Office of Enforcement and the Solicitor on a lower level, Mr. Ryan and myself have been able to get together and review those, and we have been able to work out those differences. Certainly, the Solicitor's Office and Mr. Ryan in particular have been cooperating in our efforts to get the appropriate cases referred for litigation.

Rather than review the factual statement of the two cases that is set forth in the statement, I will skip that and submit the statement for the record. Again, Senator, I appreciate the opportunity to be here. We fully appreciate the efforts of this committee and will help wherever we can to root out corruption in the pensions of the United States.

[The prepared statement of Mr. Clayton follows:]

# STATEMENT OF JEFFREY N. CLAYTON
ADMINISTRATOR OF PENSION AND WELFARE BENEFIT PROGRAMS
U.S. DEPARTMENT OF LABOR
BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

May 27, 1982

Mr. Chairman and Members of the Committee:

I am pleased to be here today to testify before the Committee as it continues to carry out its important oversight responsibilities. With me is Alan D. Lebowitz, Assistant Administrator for Fiduciary Standards and Mervyn Schwedt, Assistant Administrator for Reports and Disclosure, both of whom served in acting capacities as the head of our enforcement office at times significant to the cases being considered by the Committee today. Also accompanying me today is William Sexton, Atlanta Regional Administrator and Jesse Day, Supervisory Investigator in our Miami Area Office, both of whom played important roles in the ILA Local 1408 cases.

Since most of the significant actions with respect to the two cases which are the subject of this mornings' hearing took place before I assumed my present office, my overview of PWBP's activities in connection with these cases is necessarily limited to that which I could ascertain from a review of available case files. I can, however, describe for you the procedures that are in place for processing enforcement cases returned to our office from the Office of the Solicitor.

When cases which have previously been referred to the Solicitor's Office are returned to The Office of Enforcement (OE) with specific actions recommended, the OE staff involved with these cases meets with the Office Director and The Division Chief and considers the recommended course of action. They specifically review the conclusions and recommendations contained in the Solicitor's return memorandum. If there is no disagreement or question with respect to the recommendation, the case is referred by memorandum back to the originating field office for appropriate action in line with the recommendations contained in the response from the Solicitor's Office. If the field office has no objection, the case will proceed accordingly.

If, however, the OE staff does not agree with the Solicitor's recommendation, or if further clarification of their position is deemed necesssary, the case will be referred back to the Solicitor's Office with a memorandum explaining our disagreement or question. Similarly, if the involved field office disagrees with the course of action passed on to it by OE, they are free, in fact expected, to return the case to the National Office for reconsideration.

Using this procedure, it is my desire to see to it that all confusion or disagreement with respect to a case from any source will be surfaced quickly and, hopefully, resolved. This kind of approach is particularly important for me, since I am generally not involved in the initial decision to refer cases to the Solicitor's Office and, therefore, I need the background knowledge that only the permanent OE staff can provide. In fact, if no disagreement is expressed during this process, I generally have no reason to question the disposition of the case.

It is also important to recognize that LMSA now has the ultimate say on what cases go forward and which do not. If there is a disagreement between the Solicitor's Office and the Program, LMSA as the client makes the final decision on whether to proceed. We obviously, of course, weigh the Solicitor's recommendation heavily in making that decision.

My review of the available files with respect to the two subject cases reveals the following:

TEAMSTERS LOCAL 945. This case was originally opened on October 27, 1977, based on a September 14, 1977, Wall Street Journal article which described a scheme under which plan assets were deposited in local New Jersey banks and those banks made unsecured loans to individuals involved with those plans. Our investigation, however, did not begin until sometime in mid-1979. The delay was apparently at the request of the Justice Department which was proceeding against the individuals criminally. The investigation was completed in December of 1979, and recommendations were forwarded to the Office of Enforcement by the New York Region on December 14, 1979.

4.

The regional office recommended that, in light of the fact that two of the plan's union trustees had been convicted of a crime involving the investment of plan assets, these trustees should be removed and replaced by a court appointed receiver until the disposition of the convicted trustees' appeals. Although not clear from the region's transmittal memorandum, it appears that they also believed that ERISA violations occurred with respect to trustees' failure to collect rental payments from the Coterie, Inc., the waiver of certain of the plan's rights regarding a $50,000 loan to the Coterie enabling that organization to secure an additional $125,000 in bank financing, and the subsequent write-off of the loan by the plan. The Coterie, Inc. was a restaurant operated by Ernest Palmeri, who was a business agent of 945 and was one of those convicted in Justice's case.

In any event, the Office of Enforcement referred the case to the Solicitor's Office for litigation of these matters on January 25, 1980. As far as I can tell from the files, during the time that the case was pending in the Solicitor's Office there was general agreement between the two offices as to the violations, and additional documentation was sought in order to further support those allegations. Additional information was provided by the Newark Area Office in July, 1980.

However, on April 8, 1981, the case was returned to the Office of Enforcement from the Solicitor's Office with a recommendation that the Department take no further action. Certain aspects of the Solicitor's response were unclear to us and, as a result, clarification was sought. Ultimately the case was closed pursuant to the Solicitor's recommendation after having gone through the procedure I described earlier. To the best of my knowledge, no objections to this course of action were expressed by the field offices involved.

I would like to make one additional point with respect to this case. We did not seek voluntary compliance on any issues raised, and I don't believe anyone involved with the case recommended any such action. It is not the Department's practice to seek voluntary compliance in cases where it had been determined that no litigation would be instituted should there be non-compliance with those demands.

ILA LOCAL 1408. The investigations of the pension and welfare plans of ILA Local 1408 commenced in late 1978, following the June 7, 1978, indictment of 22 officers of the ILA along with officials of shipping and service companies. These indictments ultimately led to 37 ILA funds being investigated by PWBP in the southeast part of the country. Two sets of recommendations resulting from the Local 1408 investigations were sent to the Solicitor's

Office by PWBP. The first was on October 22, 1979, and recommended that Trustee Landon Williams be removed as a result of his recent conviction for receiving unlawful kickbacks. On November 21, 1979, a second set of recommendations was forwarded to the Solicitor by OE relating to a number of operational defects in the administration and management of the plans.

In July, 1980, a decision was made not to expend resources to proceed in the removal case against Mr. Williams at that time in light of the expected decision on his appeal by the Fifth Circuit Court of Appeals, and his acquittal in the related tax case. In mid-1981, however, a decision was reached to seek voluntary compliance in connection with the other issues outstanding from the investigations. Our letter demanding such voluntary compliance was sent to the trustees on March 1, 1982, and included a demand that Mr. Williams resign or, failing that, the other trustees take action to remove him. While the trustees appear to have indicated a willingness to work toward correcting the identified violations, they have claimed that they have no authority to remove Mr. Williams and Mr. Williams has refused to resign. We are presently considering an appropriate course of action.

This concludes my prepared statement Mr. Chairman. My colleagues and I will be pleased to answer any questions you may have.

Thank you.

The CHAIRMAN. Thank you so much, Mr. Clayton. I want to commend you and Mr. Ryan. I think we have had very good cooperation over the last year from your offices. It is not easy to have to go through these experiences but I think these hearings are essential because I think we are making the case that we do need to do a really good job for the workers of America in protecting their pension funds, and of course in protecting them in so many other ways from the corruption of certain individuals who just plain rip them off.

We appreciate having both of you here with us today. Let's start with Mr. Day. Mr. Day, you have been an investigator for the Department of Labor in Miami, as I understand it, since 1976. Is that right?

Mr. DAY. Yes, sir.

The CHAIRMAN. As I understand your duties as a supervisory investigator, it became your job to supervise the activities of both investigators and auditors in the field of investigation throughout the State of Florida. Is that correct?

Mr. DAY. That is true.

The CHAIRMAN. As I understand it, did you head the Labor Department's investigation of the eight ILA pension and welfare royalty and vacation funds of which Landon Williams was the trustee in Jacksonville?

Mr. DAY. At that time I was an investigator before becoming a supervisory investigator. I was a team leader and had two other individuals that accompanied me to Jacksonville to audit and investigate that plan.

The CHAIRMAN. In other words, you had two auditors who helped work with you on that case. Is that correct?

Mr. DAY. That is true.

The CHAIRMAN. Now as I understand it, your investigative team did go in and audit the books of these eight ILA funds in Jacksonville. Is that right?

Mr. DAY. Yes, sir.

The CHAIRMAN. How long did it take you to complete the audit?

Mr. DAY. The audit began in March 1979 and our reports of investigation were forwarded on the Jacksonville cases in October and November 1979.

The CHAIRMAN. I see. Therefore, it was really about 5 months. As I understand it, it took you about 3½ months in the field and about 5 months totally or another 5 months in the office to analyze your findings.

Mr. DAY. Yes, sir. We went back to Jacksonville on occasion to get some more records or interviews.

The CHAIRMAN. Is the October 24, 1979, report of investigation on the ILA Longshoremen's & Warehousemen's pension, welfare, and vacation/holiday funds a result of this audit?

Mr. DAY. That ROI is on six of the eight cases.

The CHAIRMAN. OK. We will enter the report of that investigation into the record as Day Document No. 1, without objection, at this point.

[Day Document No. 1 follows:]

Day Document # 1

U.S. DEPARTMENT OF LABOR
Office of Labor-Management
and Welfare-Pension Reports

## REPORT OF INVESTIGATION

FILE NO.: 42-04605

SUBJECT:
Jacksonville Maritime Association
International Longshoremen's Association
Pension Plan
920 Florida Ave.
Jacksonville, Florida 32206

EIN 59-0834277-001

PROGRAM: 48 - Fiduciary

VIOLATION(S):

DATE: 10-24-79

BY: William Chapman, Aud.
Jesse Day - Inv.
Robert Snider - Aud.

AT: Miami AO

STATUS: Action

SYNOPSIS:

PREDICATION

An indictment of ILA officials dated June 7, 1978 contained allegations that Trustees of ILA Pension and Welfare Plans permitted, for a consideration, contributing employers to file false reports understating hours worked, resulting in monetary losses to the plans. This case was opened to determine the amount of plan losses and to pursue restitutions to the plan.

ISSUES AND FINDINGS

The Trustees have caused the L/S Pension Plan to become indebted to other L/S Employee Benefit Plans of which they are also Trustees, in apparent violation of Act Sections 406(b)(2) and 404(a)(1)(D).

The Trustees have allowed participating employers to contribute to the L/S Pension Fund on a lesser number of hours than employees of those funds actually worked, in apparent violation of Act Sections 404(a)(1)(D) and 406(a)(1)(B).

The Trustees have failed to require proper accounting for advances and expenses incurred in connection with travel and seminars, in apparent violation of Act Sections 404(a)(1)(A) and 406(a)(1)(D).

The Trustees have failed to secure adequate bonding, in apparent violation of Act Section 412(a).

The Trustees have failed to properly allocate joint income and joint expenses among several related plans, in apparent violation of Act Sections 404(a)(1)(A) and (B) and 406(b)(2).

The Trustees have caused the L/S Pension Plan to reimburse and pay educational expense of the Plan's Attorney, in apparent violation of Act Sections 406(a)(1)(D) and 404(a)(1)(A).

The Trustees have caused the L/S Pension Plan to pay compensation to Plan Trustees, in apparent violation of Act Section 404(a)(1)(D).

Administrator

DISTRIBUTION:
2 NATIONAL OFFICE PWBP/ 1 set of Exh.
1 REGION ATL
1 AO FILE MIAMI /w 1 set of Exh.

APPROVAL: AREA XXXXXXX:
Carl E. Crouch

APPROVAL: REGIONAL DIRECTOR

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Its contents are not to be disclosed to unauthorized persons.

A Trustee has allowed for consideration, a contributing employer, to contribute less than the proper amount of contributions, in apparent violation of Act Section 406(b)(3).

OTHER FINDINGS

The investigation revealed that the CPA Financial Statements had apparent deficiencies.

The investigation revealed that, although the GAI Fund is a participating employer, there were no written agreements setting forth the basis of this participation.

The Trustees are apparently failing to properly consider their percentage allocation procedure in light of those employers contributing at lesser lump-sum rates.

The Trustees failed to keep adequate records.

The Collective Bargaining Agreement provides for a lump-sum contribution, placing the trustees in the position of adversity when allocating among different plans.

The Plan Administrator, Attorney, CPA's and Trustees have failed to insure the tax qualified status of the plans is in the best interest of the participants.

The Plan Documents of the Vacation/Holiday Fund are inadequate.

The actuaries for the L/S Pension Plan also received commissions on policies sold to the plan.

The claims documentation procedure for the L/S Welfare Fund made auditing difficult

The Administrator of the L/S Pension Fund had hired his son to work as bookkeeper and the son remained in this position after 6-30-77.

The Trustees have no shop audit program.

IRS CHECKSHEET

The IRS checksheet referral was sent to IRS on July 10, 1979.

## I. PREDICATION

On June 7, 1978, twenty two officers of the International Longshoremen's Association and officials of shipping and service companies were indicted by the Federal Grand Jury of the Southern District of Florida. Included in the indictment were allegations that trustees of ILA Pension and Welfare Plans permitted, for consideration, contributing employers to file false reports, understating hours worked, resulting in monetary losses to the plans. This case was opened to determine the amount, if any, of plan losses, and pursue, if necessary, restitution to the plan (EXH 1).

## II. POTENTIAL JURISDICTIONAL PROBLEMS

None

## III. BACKGROUND

This Pension plan was established September 26, 1957 in the City of Jacksonville, Florida pursuant to a Collective Bargaining Agreement (hereafter C.B.A.) effective October 1, 1956. The Trust Agreement states that the CBA was negotiated by the following employers and Local ILA unions: (EXH 2, p. 12).

| EMPLOYERS | UNIONS |
|---|---|
| Strachan Shipping Company | ILA, Local 1408 |
| Kaufmann Shipping Company | ILA, Local 1593 |
| McGiffin & Company, Inc. | |
| Southern Shipping Company | |
| Caldwell Shipping Company | |
| C. G. Willis, Inc. | |

The plan is presently operating pursuant to a CBA covering the three year period beginning October 1, 1977 and ending September 30, 1980 (EXH 3). There are several memorandum agreements between the locals and employers not signatory to the CBA (EXH 4). The plan is administered jointly by an employer-union Board of Trustees consisting of three employer representatives and three union representatives.

The plan is a defined benefit plan providing monthly pension benefits to retirees. These benefits continue throughout the participants' lifetime. Under certain circumstances benefits are payable to employees who become permanently and totally disabled and to spouses of deceased participants.

Vesting in the plan is 100% after ten (10) years of service. Normal retirement is age 62 with 10 or more credited years of service. Early retirement is available once the participant has attained age 59 and has completed ten (10) credited years of service (EXH 5, p. 5,6),(EXH 6),(EXH 7).

The plan covers any waterfront employee of the employers whose wage rates and working conditions are governed by the CBA. In addition, any employee or representative of the International Longshoremens' Association (hereafter ILA), and any representative or employee in the employment of any of the local unions of the International or of the South Atlantic and Gulf Coast District of the ILA, who is a resident of Jacksonville, is covered by the plan provided the required contribution for such persons are paid to the trustees (EXH 3, p. 2, 3).

The Annual Report, Form 5500, for the year ended 9/30/77 indicates there were 700 active participants, 132 retired participants receiving benefits and 2 deceased participants whose beneficiaries were receiving benefits. The report listed plan assets as of 9/30/77 of $6,518,060 (EXH 8, p. 2, 3).

## IV. PLAN ADMINISTRATION AND FINANCIAL OPERATION

### A. Joint Pension Committee

The six trustees for this plan known as the Joint Pension Committee are also trustees for the ILA Longshoremens' (hereafter L/S) Vacation and Welfare Plans and the ILA Warehousemens' (hereafter W/H) Pension, Vacation and Welfare Plans. LANDON WILLIAMS, Trustee of this plan, is also a Trustee and Co-Chairman of the GUARANTEED ANNUAL INCOME PLAN, a related plan which provides an unemployment benefit. MR. WILLIAMS is named in the Grand Jury Indictment (EXH 1, p. 6).

The plan has been trusteed as follows since June 30, 1974 (EXH 9).

| EMPLOYER | FROM | TO |
|---|---|---|
| Gerard B. Fox | 6/30/74 | Present |
| J. A. Kaufmann, Jr. | 6/30/74 | Present |
| Warren Anderson | 6/30/74 | 3/9/76 |
| Raymond King | 7/16/76 | Present |
| UNION | FROM | TO |
| Landon Williams | 6/30/74 | Present |
| James M. Stark, Jr. | 6/30/74 | 1/10/78 |
| Jack Land | 2/8/78 | Present |
| Clarence Rodgers | 6/30/74 | 3/6/78 |
| Lewis Jones | 3/7/78 | Present |

### B. Plan Service Providers

1. MR. MARION JOHNSON was the Administrator of the Longshoremens' Pension Fund prior to January 1, 1975 and resigned this position on May 11, 1979. MR. RAY BILLS replaced MR. JOHNSON during an interim period as acting administrator (EXH 10, 5-11-79). The current administrator is MR. RONNIE BELL. MR. JOHNSON was also administrator of the related funds which were operated as one consolidated unit.

The related funds are the Longshoremens' Welfare Fund, Vacation-Holiday Fund, the Warehousemens' Pension, Welfare and Vacation-Holiday Funds and Employees Royalty Fund. These Funds have all been investigated and are the subject of separate ROI's.

2. MR. CLARK W. TOOLE, JR. is the Fund's attorney and is also the attorney for the above mentioned related funds. MR. TOOLE's Office is located at 1014 Barnett Bank Building, Jacksonville, Florida 32202, telephone (904) 356-1306. There is no written contract between MR. TOOLE and the Fund (EXH 11). MR. TOOLE has served as attorney for this and the related Funds since before January 1, 1975 and is presently the attorney for the Fund. In addition to compensation for specific service to the plan, MR. TOOLE is currently on a $10,000 per year retainer (EXH 12).

3. MR. RALPH J. HOCHMAN, CPA, currently provides accounting services to the plan. The accounting firm of MEEK and MCLEOD located at 3250 Beach Blvd., Jacksonville, Florida, telephone (904) 398-6476 provided accounting services to the plan from inception of the funds to August 7, 1978 when MR. HOCHMAN was appointed (EXH 13). MR. HOCHMAN's address is 6820 Old St. Augustine Road, Jacksonville, Florida, telephone (904) 737-0779 (EXH 10, 8-7-78).

4. MR. RAY BILLS provides accounting consultant services to the plan. He is also the internal accountant for the GUARANTEED ANNUAL INCOME PLAN located at 1336 Haines Street, Jacksonville, Florida, telephone (904) 353-3651. MR. BILLS' duties are to advise the Administrator regarding accounting matters. MR. BILLS was appointed by the Board of Trustees in June of 1978 (EXH 10, 6-2-78, p. 2).

5. Actuarial services for the plan were provided by JOHNSON and HIGGINS of Atlanta, Ga. This firm has provided these services since March 11, 1958 (EXH 14).

6. C&S BANK OF ATLANTA, GA. provides investment advice to the plan. C&S is currently providing this service and has provided it since September 1, 1971 (EXH 10, 1-21-72, p. 1).

7. NEW YORK SHIPPING ASSOCIATION provides electronic data processing for the plan. The records maintained on computer are quite extensive and requires an in-house key punching operation. This same service is provided to the related funds previously mentioned as well as the ILA Local Union 1408 and the SOUTH ATLANTIC ILA-GAI Fund. There is no contract with NEW YORK SHIPPING ASSOCIATION only a letter of Assurance (EXH 15).

## C. Financial Operation

### 1. Funding

The CBA provides for lump-sum contribution by employers, meaning the contribution is not allocated by amount or percentage in the CBA (EXH 3, p. 6). The trustees have sole discretion as to how the total contributions are to be allocated among the pension, health and vacation-holiday funds (EXH 2, p. 4). The trustees determine the allocation and a schedule of the amounts and percentages are documented in the minutes of the meetings of the Board of Trustees (EXH 16).

Employers are currently sending the contributions directly to the plan administrator's office. In previous years the employers had directly deposited the contributions in the bank, however, due to problems with late and unidentified deposits the procedures were changed (EXH 17). The administrator uses daily payroll reports, weekly payroll reports and quarterly summaries prepared by the employers to ascertain the correctness of the contributions (EXH 17).

The contributions are deposited to an escrow account at the BARNETT BANK OF JACKSONVILLE and then transferred to the various funds as required. The bank is notified of the pension percentage allocation, by the Board of Trustees, and automatically transfers the proper allocation for the pension fund to the C&S Bank (EXH 18). All other transfers from the escrow account are approved, by letter, by the Board of Trustees (EXH 19).

2. Disbursements

All the expenses for this plan and the related plans, with the same six trustees as this plan, are paid from one operating account located in the BARNETT BANK OF JACKSONVILLE (EXH 20). Some of the expenses paid from the operating account are allocated back to the particular plan incurring the expense (EXH 21).

Expenses for both Warehousemens' plans and Longshoremens' plans are paid from this operating account (EXH 2). The checks, written on this account, require both the administrator's and assistant administrator's signature (EXH 22).

3. Investments

The funds transferred to C&S Bank are invested, on behalf of the plan, in stocks and bonds (EXH 23, ie 9-30-75, p. 5). The balance of the funds left in escrow are invested by the plan administrator in bank certificates of deposit (EXH 23, ie 9-30-77, p. 11).

4. Internal Control

Mr. Hochman, CPA, performed a study of the Plan's internal procedures*(EXH 24). His report indicates that there are not clean cut responsibilities for the various functions that must be done to properly complete the funds' objectives. The Administrator's responsibility and related authority has never been clearly defined. A suggestion in this area was that the administrator receive and properly classify all monies received under the various union contracts. The report stated there has been a failure, on the part of the Trustees to provide detailed procedures to the Administrator and, as a result, the Administrator has had to handle difficulties on a problem by problem basis, with no consistent set of regulations to follow.

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*For the year ended 9-30-78.

The report comments on numerous basic deficiencies and problems existing in the basic accounting system and the flow and processing of paperwork. The report states that the Fund has no general books and at best, a very poor accounting system. The report comments as follows regarding the most discouraging items that were initially encountered.

1. The bank accounts had not been reconciled since the prior audit.

2. The basic records from which to reconstruct the year's transactions were all over the office and many of the supporting documents could not be found.

3. The prior accountants had not utilized the Pension's office staff; therefore, the staff was simply unable to be of much help.

4. Monies of the various funds had been mixed and no record had been kept to help identify the comingled funds.

The Administrator had not been instructed, by the trustees, in investment policy.

5. Benefit Payments

Pension benefits are paid by the C&S BANK OF ATLANTA. Eligibility for benefits is determined by the JOINT PENSION COMMITTEE (EXH 5, p. 3).

6. Other Information

A. There are six (6) plans which are administered and treated as one plan with various benefits. The six plans have comingled fund assets and expenses (EXH 23 ie, 9-30-77, p. 7). The Longshoremen plans and the Warehousemen plans are governed by different Collective Bargaining Agreements. The Longshoremen and Warehousemen Plans cover different groups of participants. Within the Longshoremen plans there are non-identical participants and the case is the same in the Warehousemen plans (EXH 25, 26 & 27). Section VII of this report deals with this area in more detail.

B. In addition to the above six funds, there are three Royalty funds which have their genesis in the Collective Bargaining Agreements. The purpose of the first fund (herein called the CONTAINER FUND) is to compensate employees who lose work due to the use of containers. To qualify an employee must work at least 700 hours during a fiscal year. After working the required number of hours, benefits are distributed equally to all qualifying employees. This fund is trusteed by the same six trustees as the Longshoremen Pension, Health and Vacation-Holiday Funds and the Warehousemen Pension, Health and Vacation-Holiday Funds (EXH 3).

The purpose of the second fund (hereafter the DISTRICT FUND) is not clear. The CBA's state that additional monies are to be collected and "used for supplementing funds when receipts decline due to reduced hours paid to the men." The question is raised as to what funds or fund is to be supplemented. An interview with the GAI Fund Administrator and minutes of the Board of Trustees of the GAI Fund indicate that the Trustees of the District Fund have agreed to use the District Fund as a source of funds for the GAI Fund (EXH 28). The District Fund is trusteed by the negotiating committee, according to the CBA (EXH 3).

In actual practice the District Fund contributions, required by the CBA are contributed to and accounted for in the GAI Fund (EXH 29). The purpose of the third Fund (herein called SUPPLEMENTAL CONTAINER FUND) is to collect monies to be deposited into the CONTAINER FUND and "to be used only and exclusively for cash disbursements to the men." The CBA indicates that the "terms and conditions of the disbursements" are to be determined by the CONTAINER FUND Trustees (EXH 3). Thus, the CONTAINER FUND and the SUPPLEMENTAL FUND are treated as one fund for administration purposes and this fund has the same six trustees as the Longshoremen's and Warehousemen's Pension, Health and Vacation-Holiday Funds.

C. The current CBA covering the period October 1, 1977 through September 30, 1980 contains the newly negotiated JOB SECURITY PROGRAM (hereafter JSP). As described the JSP is intended to protect short falls in the GUARANTEED ANNUAL INCOME PLANS, Pension Plans or Welfare Plans in the local ports. The JSP Plan is funded by a tonnage assessment schedule as set forth in the CBA (EXH 3, p. 44).

V. BONDING

This Fund was not bonded at the beginning of this investigation in March of 1979. A bonding investigation has been previously conducted by the Miami AO Case No. 42-4579(49). The Administrator, MARION JOHNSON, had attempted to secure bonding but could not get a commitment from any surety company. However, during the current investigation, bonding was secured from Federal Insurance Company. This is an approved surety company listed in the Federal Register dated July 1, 1977.

This bond provides blanket coverage for all ILA Employee Pension, Welfare and Vacation Funds. However, it provides only $500,000 maximum coverage. In arriving at this maximum coverage the policy provided "when there is more than one insured, the aggregate liability of the company for loss or losses sustained by any or all of them shall not exceed the amount for which the company would be liable if all losses were sustained by any one of them."

Since the Pension plan itself, to be properly bonded, requires $500,000 coverage, the above blanket bond of $500,000 coverage, as limited, does not appear to be sufficient (EXH 30).

## VI. REQUEST FOR EXEMPTIONS

The investigation did not disclose any request for variances and exemptions by the Plan (EXH 31). The Labor Dept. has not received an exemption request (EXH 68)

## VII. ISSUES AND FINDINGS

A. The trustees have caused the L/S Pension Plan to become indebted to other L/S Employee Benefit Plans of which they (the trustees) are also trustees. There are different groups of participants in each of the plans. The above actions appear to be in violation of Act Section 406(b)(2) and 404(a)(1)(D).

1. Description of Violation

In accordance with the Collective Bargaining Agreement, the participating employers agreed to make a lump sum payment into the pension, vacation and health funds of the LONGSHOREMEN'S ASSOCIATION EMPLOYEE BENEFIT PLANS (EXH 3, p. 4).

The Trust Agreement states the trustees have "full power and authority to apportion and allot, (and in their discretion to change the apportionment and allotment), to each plan a proportion of the employer's total contribution, but contributions once received, allocated and dedicated to a particular plan shall not thereafter be changed or transferred to another plan." (EXH 2, p. 4)

The Trustees made the following allocations to the pension plan of contributions for periods indicated:

| FYE | ALLOCATION % | ALLOCATION AMOUNT | AUTHORIZATION MINUTES DATED (EXH 10) |
|---|---|---|---|
| 9-30-74 | 41.72 | $ .995 | 9-19-74 |
| 9-30-75 | 42.32 | *1.115 | 3-11-75, 10-21-75 |
| 9-30-76 | 41.31 | 1.20 | 10-21-75, 8-13-76 |
| 9-30-77 | 40.56 | 1.30 | 1-5-77 |
| 9-30-78 | 37.41 | 1.315 | 11-29-78 |

*$1.065 allocated 3-11-75, an additional $.05 allocated 10-21-75.

Total Employer Contributions received during the above periods are as follows:

| YEAR ENDED | AMOUNT | SOURCE (EXH 23) |
|---|---|---|
| 9-30-74 | $2,327,109.25 | 9-30-74, p. 12 |
| 9-30-75 | 1,969,164.77 | 9-30-75, p. 12 |
| 9-30-76 | 2,406,644.08 | 9-30-76, p. 12 |
| 9-30-77 | 2,619,789.94 | 9-30-77, p. 12 |
| 9-30-78 | 2,920,694.57 | 9-30-78, p. 5 |

Per the above allocation percentages, the following amounts were due to the L/S Pension Fund: (EXH 23)

| FISCAL YEAR ENDED CONTRIBUTIONS RECEIVED | FISCAL YEAR CONTRIBUTIONS APPLICABLE TO | AMOUNT OF CONTRIBUTIONS RECEIVED | TRUSTEE PENSION ALLOCATION PERCENTAGE | AMOUNT DUE PENSION | TOTAL DUE PENSION |
|---|---|---|---|---|---|
| 9-30-75 | 9-30-74 | 135,922.83 | 41.72 | 56,707.00 | |
| | 9-30-75 | 1,833,241.94 | 42.32 | 775,827.99 | *832,530.8 |
| 9-30-76 | 9-30-75 | 120,673.92 | 42.32 | 51,069.20 | |
| | 9-30-76 | 2,285,970.16 | 41.31 | 944,334.27 | 995,403.4 |
| 9-30-77 | 9-30-76 | 147,035.40 | 41.31 | 60,740.32 | |
| | 9-30-77 | 2,472,754.54 | 40.56 | 1,002,949.24 | 1,063,689.5 |
| 9-30-78 | 9-30-77 | 165,712.75 | 40.56 | 67,213.09 | |
| | 9-30-78 | 2,754,981.82 | 37.41 | 1,030,638.70 | 1,097,851.7 |
| | | TOTAL DUE FOR FYE 9-30-75-9-30-78 | | | 3,989,475.6 |

*Rounded to 832,530.80 by Trustees

The CPA Audited Financial Statement for the FYE 9-30-74 states that the Pension Fund had $154,685.90 in the Longshoremen's Escrow Account (EXH 23, 9-30-74, p. 11).

Transfers to the Pension's C&S account after 9-30-74 are as follows:

| FYE | TRANSFERS FROM LONGSHORE ESCROW (EXH 32) | TRANSFERS FROM OTHER SOURCES (EXH 33) | TOTAL TRANSFERRED |
|---|---|---|---|
| 9-30-75 | $869,766.08 | 0 | $869,766.08 |
| 9-30-76 | 950,746.09 | 5,196.83 | 955,942.92 |
| 9-30-77 | 1,242,608.09 | 20,930.97 | 1,263,539.06 |
| 9-30-78 | 1,196,319.97 | 1,787.60 | 1,198,107.57 |
| | 4,259,440.23 | 27,915.40 | 4,287,355.63 |

The total contributions due to the LONGSHORE PENSION FUND would be as follows:

| | |
|---|---|
| 9-30-74 Funds held in L/S Escrow | $154,685.90 |
| Allocated FYE Contributions to be transferred 9-30-75 - 9-30-78 | 3,989,475.62 |
| TOTAL | 4,144,161.52 |

The total excess funds transferred to the pension account is computed as follows:

| | |
|---|---|
| Total Due | $4,144,161.52 |
| Total Transferred | 4,287,355.63 |
| Excess transfers | ($ 143,194.11) |

These excess funds were taken from the assets of the L/S Escrow account and W/H Escrow Account (EXH 32, 33).

The assets in the Escrow Account represent employer contributions received and allocated (as shown above), but not yet transferred, to Longshoremen's and Warehousemen's Benefit Plans. The transferring of assets in excess of those allocated, to Pension, would result in the using of funds allocated to other plans. These excess transfers are shown on the pension fund's financial statements as owed to the L/S Welfare Fund (EXH 23, 9-30-76, p. 3). This appears to be in violation of the Pension Plan Trust instrument and if true would be in violation of Act Section 404(a)(1)(D).

In addition, the L S and W/H Pension, Vacation-Holiday and Welfare Plans have the same trustees (EXH 9). However, there are different participants in these plans (EXH 25, 26, 27). Act Section 406(b)(2) states that "A Fiduciary with respect to a plan shall not - in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interest of the plan or the interests of its participants or beneficiaries." Since the participants of the Pension Fund would be interested in greater retirement benefits, as opposed to other participants of different funds desiring increased vacation or health benefits, there appears to be an adverse relationship between the participants of these plans. Therefore, any transaction by the trustees that would aid one fund at the expense of another could violate Act Section 406(b)(2).*

During the period (1976-1977) while excess funds were being transferred to the Pension Plan, the Pension Plan trustees increased pension benefits as follows:

| DATE INCREASE EFFECTIVE | AUTHORIZATION (EXH 10) | BENEFIT CHANGE |
|---|---|---|
| 10-1-74 | Trustee Minutes 1-8-75 | Eligibility age to receiv Pension Benefits reduced from 45 to 40 |
| 9-1-76 | Trustee Minutes 8-13-76 | Increased Pension Benefits from $300 to $350 |
| 2-1-77 | Trustee Minutes 1-5-77 | Increased Pension Benefits from $350 to $400 |
| 1-1-79 | Trustee Minutes 11-29-78 | Increased Pension Benefits from $400 to $425 |

*(EXH 25,26 & 27)

| | |
|---|---|
| % of L/S Welfare Participants not eligible for L/S Vacation benefits | 6.4% |
| % of L/S Vacation Participants not eligible for FULL L/S Welfare benefits | 1.0% |
| % of L/S Pension Participants not eligible for L/S Vacation and/or L/S Welfare benefits | 16.4% |

As stated above, the trustees, during their August 13, 1976 meeting, raised pension benefits. During the same meeting, the trustees agreed that, due to economic condition existing in the industry and in order to insure the future payment of welfare and pension benefits;

1. Paid holidays for Warehousemen would be cut to three paid holidays effective August 13, 1976.
2. Schedule II benefits for both Longshore and Warehousemen would be cancelled effective 9-30-76 (EXH 5).
3. Employees injured on the job and being paid Workman's Compensation benefits will not be entitled to credits for this time for vacation, holiday and royalty benefits, effective 9-30-76.

As shown above, excess transfers were made to the Pension Fund. Furthermore, the trustees increased pension benefits while decreasing benefits of the Vacation-Holiday and Welfare funds. It appears that these increased pension benefits resulted in reducing benefits in the other funds. In addition, it appears that the increased benefits were funded from contributions allocated to the other funds. Due to the adverse relationship between the participants of the pension plan and the other plans, it appears that the common trustees have violated Act Section 406(b)(2).

2. Loss to the Plan

The Pension plan has not substained a loss, at this time, as a result of the above actions. However, since the excess transfers could have been used for funding increased benefits, any repayment to other plans of excess transfers could result in losses of current contributions, to the Pension plan. As stated above excess transfers to the Pension plan during the period 1-1-75 to 9-30-78 equaled $143,194.11.

3. Violators as Fiduciaries

The following were trustees during the period in which these violations occurred and were Fiduciaries within the meaning of Act Section 3(21). (See Section IV.A. of this report).

| EMPLOYER | EMPLOYEE |
|---|---|
| Gerard Fox | Landon Williams |
| J. A. Kaufmann, Jr. | James M. Stark, Jr. |
| Warren Anderson | Jack Land |
| Raymond King | Clarence Rodgers |
| | Lewis Jones |

4. Timeliness of Violations

The investigation indicates that these violations occurred on or after the effective date of the Fiduciary Standards of ERISA and were not subject to the limitations of actions as prescribed by Act Section 413.

### 5. Position of Fiduciaries

The Trustees of the ILA L/S Pension Plan have refused to meet, with representatives of the DOL, individually. Since the DOL policy is to meet with the Board members individually and not as a group, no trustee closing interviews were conducted. Therefore, the Trustees' position, with regards to these potential violations, could not be obtained (EXH 11).

B. The Trustees have allowed the SOUTH ATLANTIC GUARANTEED INCOME FUND, (hereafter GAI FUND) the ILA EMPLOYEES ROYALTY FUND and Local Union 1408, participating employers of the L S Pension Fund, to remit contributions to the ILA Longshore Pension Plan, based on a lesser number of hours than employees of those funds actually worked. The above appears to be in violation of Act Section 404(a)(1)(D) and 406(a)(1)(B).

### 1. Description of Violation

In accordance with the CBA, the participating employers of the ILA Employee Benefit Plans were to remit contributions to the ILA Pension, Welfare, and Vacation/Holiday Funds, "for all hours for which the men receive pay." (EXH 3, p. 4). During the investigation, it was established that contributions from the GAI FUND were based upon 700 hours instead of the actual hours worked (EXH 34, 35). MR. BALL, Administrator for the GAI FUND, stated that GAI office employees worked 35 hours per week and GAI dispatchers worked 40 hours per week (EXH 34). MR. BLYDEN GEIGER, Dispatcher for the GAI, stated he did not understand why he was given credit for only 700 hours, when he worked 2,080 hours (EXH 36).

As a result of the above, the ILA PENSION PLAN did not receive $41,766.16 in contributions. This was computed as follows (EXH 37):

| FYE | CONTRIBUTION RATE | GAI ACTUAL HOURS | GAI HOURS REPORTED | GAI DEFICIENT HOURS | ADD'L CONTRIB. DUE | TRUSTEE ALLOC. TO PENS. | AMOUNT DUE PENSION |
|---|---|---|---|---|---|---|---|
| 9-30-75 | $2.635 | 14,200 | 6,300 | 7,900 | $20,911.36 | 42.32% | $8,849.69 |
| 9-30-76 | 2.905 | 14,941 | 6,067 | 8,874 | 25,778.97 | 41.31% | 10,649.29 |
| 9-30-77 | 3.205 | 13,819 | 5,225.5 | 8,642.5 | *27,731.26 | 40.56% | 11,247.80 |
| 9-30-78 | 3.515 | 13,980 | 5,600 | 8,380 | 29,455.70 | 37.41% | 11,019.38 |
| | | | | TOTAL DUE PENSION | | | $41,766.16 |

*Includes overpayment on behalf of D. SPICER, which is not refundable, of $189.10

During the same period, it was established that contributions from the ROYALTY FUND, as an employer of Inspectors who participate in the above funds, were based upon 1300 hours, instead of the actual hours worked (EXH 35, 38).

During an interview with MR. GEORGE SPENCER, Royalty Inspector, he stated that Inspectors in addition to working normal week days were also required to work nights and weekends when necessary (EXH 39).

As a result of the above underpayments, the ILA PENSION PLAN did not receive $9,291.78 in contributions. This was computed as follows (EXH 37):

| FYE | CONTRIB. RATE | 1st & 3rd ROYALTY ACTUAL HOURS | 1st & 3rd ROYALTY HOURS REPORTED | 1st & 3rd ROYALTY DEFICIENT HOURS | 1st & 3rd ROYALTY ADD'L CONTRIB. DUE | TRUSTEE ALLOCAT. TO PENSION | AMOUNT DUE PENSION |
|---|---|---|---|---|---|---|---|
| 9-30-75 | $2.635 | 3,224 | 1,300 | 1,924 | $5,069.74 | 42.32% | $2,145.51 |
| 9-30-76 | 2.905 | 2,328 | 1,350 | 987 | 2,841.09 | 41.31% | 1,173.65 |
| 9-30-77 | 3.205 | 3,936 | 2,600 | 1,336 | 4,281.88 | 40.56% | 1,736.73 |
| 9-30-78 | 3.515 | 5,592 | 2,600 | 2,992 | 11,322.88 | 37.41% | 4,235.89 |
| | | | | | TOTAL DUE PENSION | | $9,291.78 |

It was also established that ILA Local Union 1408 was paying on 700 hours for janitoral and office personnel and 1,350 for union officers instead of actual hours worked (EXH 35) As a result of the above, the ILA PENSION FUND didn't receive $26,694.24 in contributions. This was computed as follows (EXH 37).

| FYE | CONTRIB. RATE | LU 1408 ACTUAL HOURS | LU 1408 HOURS REPORTED | LU 1408 DEFICIENT HOURS | LU 1408 ADD'L CONTRIB. DUE | TRUSTEE ALLOCATION TO PENSION | AMOUNT DUE PENSION |
|---|---|---|---|---|---|---|---|
| 9-30-75 | $2.635 | 14,072 | 6,833 | 7,239 | $16,184.19 | 42.32% | $6,849.15 |
| 9-30-76 | 2.905 | 13,776 | 7,180 | 6,596 | 16,322.25 | 41.31% | 6,742.72 |
| 9-30-77 | 3.205 | 14,156 | 7,008 | 7,148 | 15,830.82 | 40.56% | 6,420.98 |
| 9-30-78 | 3.515 | 13,810 | 6,698 | 7,112 | 17,859.90 | 37.41% | 6,681.39 |
| | | | | | TOTAL DUE PENSION | | $26,694.24 |

The failure of the trustees to insure that contributions were being paid in accordance with the Collective Bargaining Agreement appears to be in violation of Act Section 404(a)(1)(D).

In addition, the GAI, ROYALTY and LOCAL UNION 1408, are employers of Plan participants as defined in Act Section 3(5). As such, they are "parties in interest", with respect to the ILA PENSION PLAN, as defined in Act Section 3(14).

Therefore, the failure of these employers to fully remit contributions, in accordance with the collective bargaining agreement, appears to be an extension of credit between the plan and parties in interest. If so, this would be in violation of Act Section 406(a)(1)(B).

2. Loss to the Plan

The total loss to the pension plan is $77,752.18. This was computed as follows:

| DUE FROM | AMOUNT DUE |
|---|---|
| GAI Fund | $41,766.16 |
| First & Third Royalty Fund | 9,291.78 |
| ILA LU 1408 | 26,694.24 |
| TOTAL | $77,752.18 |

3. Violators as Fiduciaries

The trustees for the period of these violations were identical to those described in Section VII A.3. of this report.

4. Timeliness of Violations

The investigation indicates that these violations occurred on or after the effective date of the Fiduciary Standards of ERISA and were not subject to the limitations of actions as prescribed by Act Section 413.

5. Position of Fiduciary

The Trustees of the ILA L/S PENSION PLAN have refused to meet, with representatives of the DOL, individually. Since the DOL policy is to meet with the Board Members individually and not as a group, no Trustee closing interviews were conducted. Therefore, the Trustees' position, with regards to these potential violations, could not be obtained (EXH 11).

C. The Trustees failed to require proper accounting for advances and expenses incurred in connection with travel and seminars. Failure to insure that expenses are reasonable and for the exclusive purpose of providing benefits to plan participants is in violation of Act Section 404(a)(1)(A). Failure to properly account for advances to parties-in-interest could result in a violation of Act Section 406(a)(1)(B).

1. Description of Violation

As stated previously in this report, there are common trustees for all ILA PLANS. These trustees authorized themselves, MARION JOHNSON, WILLIE McLAUGHLIN and Attorney CLARKE TOOLE to attend various conventions and seminars during the period covered by this report. During the period 1-1-75 to 9-30-78 the trustees failed to require proper documentation for advances of $32,578.38 provided to the above individuals.

These individuals accounted to the funds as follows for expenses incurred while attending these conventions and seminars:

FYE 9-30-75

Convention Expenses (All Plans)

| | | |
|---|---|---|
| Per CPA Report (EXH 23, 9-30-75, p. 7) | | $16,965.08 |
| Per Disbursements (EXH 40) | | 18,561.95 |
| | DIFFERENCE | $ 1,596.87 |
| International Foundation Rebates | | ( 120 ) |
| Clarke Toole Repayment for Prior Year | | ( 1,476.87) |
| | DIFFERENCE | -0- |

The $1,476.87 repayment by CLARKE TOOLE was a reimbursement for MR. GABLE'S travel to Canada. This travel was not performed. Since this reimbursement did not pertain to the 9-30-75 disbursements, the $1,476.87 is being added back to the expenses to arrive at the amount to be substantiated for the year. This gives a total of $18,441.95 to be accounted for by vouchers or receipts.

The expenses were incurred as follows: (EXH 40)

| | | |
|---|---|---|
| Landon Williams | | $1,703.46 |
| Warren Anderson | | 890.73 |
| Marion Johnson | | 2,497.19 |
| J. A. Kaufmann | | 1,703.46 |
| Willie McLaughlin | | 1,703.46 |
| Clarence Rodgers | | 1,703.46 |
| James Stark | | 1,703.46 |
| Clarke Toole | | 890.73 |
| | SUB TOTAL | $12,795.95 |
| Martin Travel (Hawaii) | | 800.00 |
| Trustee & Service Provider Expenses | | $13,595.95 |
| International Foundation | | 4,846.00 |
| | | $18,441.95 |

Per the disbursement records, the above individuals received the above funds during the FYE 9-30-75 (EXH 40, 41). The Fund records, provided by MR. MARION JOHNSON, contained no vouchers or receipts or other accountings for the trustees' and Service Providers' expenses. Therefore, the amount advanced to the trustees and service providers of $13,595.96 appears to be an unsubstantiated expenditure by the Plan Trustees (EXH 40). The period from 10-1-74 to 12-31-74 would not be covered by the Fiduciary Standards of ERISA. However, the above $13,595.95 was disbursed after 1-1-75, therefore, no reduction for the above period is necessary (EXH 40, 42, p. 47). The portions of these expenses that are allocable to the LONGSHOREMEN'S PENSION FUND are $5,325.40. Computed as follows:

$$\frac{\text{*(Pension Contributions) } \$872{,}000.96}{\text{**(Total Contributions) } \$2{,}226{,}252.10} \times 13{,}595.95 \qquad \$5{,}325.40$$

*(EXH 43, 1975 L/S Summary)
**(EXH 43, 1975 L/S 8 Line 22)

FYE 9-30-76

Convention Expenses (All Plans)

| | |
|---|---|
| Per CPA Report (EXH 23, 9-30-76, p. 7) | $36,850.80 |
| Per Disbursements (EXH 44) | 37,292.80 |
| Difference | ( 442.00) |
| Current Year Refunds | 442.00 |
| DIFFERENCE | -0- |

The expenses were incurred as follows (EXH 44):

| | |
|---|---|
| Landon Williams | $2,671.20 |
| Warren Anderson | 2,928.39 |
| G. B. Fox | 2,011.66 |
| Marion Johnson | 3,356.30 |
| J. A. Kaufmann | 2,634.20 |
| Ray King | 920.00 |
| William McLaughlin | 4,682.86 |
| Clarence Rodgers | 4,682.86 |
| James Stark | 4,688.86 |
| Clarke Toole | 1,791.47 |
| Trustee & Service Provider Advances | $30,367.80 |
| International Foundation Amounts Returned | ( 442.00) |
| SUBTOTAL | $29,925.80 |
| International Foundation | 6,925.00 |
| TOTAL | $36,850.80 |

The records provided by MR. JOHNSON contained no vouchers or receipts or other accountings for the Trustees' and Service Providers' expenses (EXH 41). Therefore, the amounts advanced to these individuals of $29,925.80 appears to be unsubstantiated expenditures by the Plan Trustees. The portions of these expenses that are allocable to the L/S Pension Fund are $11,611.43. Computed as follows:

$$\frac{\text{*Pension Contributions } \$1{,}038{,}517.30}{\text{**Total Contributions } 2{,}676{,}540.10} \times 29{,}925.8 \qquad \$11{,}611.43$$

*(EXH 43, 1976 L/S Summary)
**(EXH 43, 1976 L/S 6, Line 23)

FYE 9-30-77

Convention Expenses (All Plans)

| | |
|---|---|
| Per CPA Report (EXH 23, 1977, p. 7) | $41,667.28 |
| Per Disbursements (EXH 45) | 36,237.50 |
| International Foundation | 5,995.00 |
| | 42,232.50 |
| DIFFERENCE | 565.22 |
| Repayment from Trustees | 565.22 |
| DIFFERENCE | -0- |

The expenses were incurred as follows: (Net of reimbursements)(EXH 45).

| | |
|---|---|
| Landon Williams (4488-150) | $4,338.00 |
| G. B. Fox | 1,688.00 |
| Marion Johnson | 4,647.50 |
| J. A. Kaufmann | 2,880.00 |
| Ray King | 4,568.00 |
| Willie McLaughlin | 5,006.00 |
| Clarence Rodgers | 4,568.00 |
| James Stark (4614-415.22) | 4,198.78 |
| Clarke Toole | 3,778.00 |
| Paid to Trustees & Service Providers | $35,672.28 |
| International Foundation | 5,995.00 |
| TOTAL | $41,667.28 |

The records provided by Mr. Johnson contained only one travel voucher for JAMES STARK for the period ending 9-30-77 (EXH 41, Tab 10, p. 2). This voucher was for JAMES STARK'S trip to San Francisco (EXH 41, Tab 10, p. 7). MR. STARK'S voucher showed advances of $1,688.00 for the trip. He accounted for $1,272.78 and reimbursed $415.22 to the Fund. An analysis of MR. STARK'S voucher revealed that he claimed food expenses of $184.70, however, he provided no documentation for these expenses. Although there was no documentation for these expenses they were not disallowed. However, other expenses of $157.70, for which no documentation was provided, was disallowed (EXH 41, Tab 10, p. 2). The remaining expenses of $34,399.50* were not substantiated by travel vouchers or other documentation.

| | |
|---|---|
| * $36,237.50 | 9-30-77 amounts disbursed |
| ( 565.22) | reimbursements by Trustees |
| ( 1,272.78) | amount accounted for by J. STARKE |
| $34,399.50 | unsubstantiated convention expenses |

The total unsubstantiated FYE 9-30-77 expenses for all trustees are $34,557.20 ($34,399.50 plus 157.70). Since no documentation could be provided, for the above $34,557.20, these expenses appear to be improper expenditures by the plan trustees. The portions of these expenses that are allowable to the L/S PENSION FUND are $13,385.35. Computed as follows:

| | | | |
|---|---|---|---|
| *Pension Contributions | $1,140,182.23 | | |
| **Total Contributions | 2,943,622.22 | x 34,557.20 | $13,385.35 |

*(EXH 45, 1977 L/S Summary)
**(EXH 43, 197~~6~~7 L S 6, Line 23)

FYE 9-30-78

Convention Expenses (All Plans)

| | | |
|---|---|---|
| Per CPA Report (EXH 46, p. 4,5) | | $17,645.65 |
| Per Disbursements (EXH 46, p. 1) | | 16,291.89 |
| | DIFFERENCE | $ 1,353.76 |
| Repayments from Trustees | | ( 1,553.76) |
| Room Deposit | | 200.00 |
| | ADJUSTED DIFFERENCE | -0- |

Per records furnished by MR. JOHNSON, JACK LAND, LEWIS JONES, and J. A. KAUFMANN furnished vouchers to the Fund (EXH 41, Tabs 7,4,5). There were no vouchers provided for the remaining Trustees and Services Providers (EXH 41, p. 2).

The expenses were incurred as follows (EXH 46):

| | | |
|---|---|---|
| Landon Williams | (1330-710) | $ 620.00 |
| Marion Johnson | | 745.55 |
| J. A. Kaufmann | (1782-132.40) | 1,649.60 |
| Ray King | | 1,072.00 |
| William McLaughlin | | 1,282.00 |
| Jack Land | (*2009.20-456.97) | 1,552.23 ✓ |
| Lewis Jones | (1435.90-254.39) | 1,181.51 ✓ |
| Clark Toole | | 1,330.00 |
| Henry Charles | | 150.00 |
| George Spencer | | 150.00 |
| | TOTAL DISBURSED TO TRUSTEES | $9,732.89 |
| International Foundation | | 6,059.00 |
| Trustee Meetings | | 400.00 |
| *Room Deposit | | 100.00 |
| | | $16,291.89 |

*NOTE:

There were two room deposits totalling $200.00. One of these deposits ($100.00) was included in JACK LAND'S travel voucher, and he computed his refund to the Plan accordingly.

Per MR. LAND'S travel vouchers, he incurred expenses of $1,552.23. Although he provided no documentation for food expenses, he was given credit for the amounts claimed for food. However, other unsubstantiated expenses of $289.26 were disallowed (EXH 41, Tab 7).

Per MR. JONES' travel vouchers, he incurred expenses of $1,181.51. He provided no receipts for food, however, the expenses for food were allowed. Other unsubstantiated charges of $380.80 were disallowed (EXH 41, Tab 4).

Per MR. KAUFMANN'S travel voucher, he incurred expenses of $1,649.60. No receipts were provided for the food expenses, however, they were allowed. Other unsubstantiated charges of $527.28 were disallowed (EXH 41, Tab 5).

There were no other vouchers provided, by MR. JOHNSON, for the remaining Trustees (EXH 41, Summary, p. 1). The total expenses disallowed and unsubstantiated by travel vouchers are $6,546.89. Computed as follows:

| TRUSTEES | AMOUNT DISALLOWED | TOTALS |
|---|---|---|
| Land | $289.26 | |
| Jones | 380.80 | |
| Kaufmann | 527.28 | $1,197.34 |
| Unsubstantiated by Travel Vouchers | | 5,349.55 |
| | | $6,546.89 |

Since the above expenses were not properly documented, it appears that the Trustees have made improper expenditures of plan funds. The portion of these expenses that are allowable to the L/S PENSION FUND are $2,317.25. Computed as follows:

| | | | |
|---|---|---|---|
| *Pension Contributions | $1,171,630.35 | x 6,546.89 | $2,317.25 |
| **Total Contributions | 3,310,193.13 | | |

*(EXH 43, 1978 L/S Summary)
**(EXH 43, 1978 L/S 6, Line 20)

The total L/S Pension expenses not properly documented for the period 1-1-75 to 9-30-78 are computed as follows:

| | |
|---|---|
| FYE 9-30-75 | $5,325.40 |
| 9-30-76 | 11,611.43 |
| 9-30-77 | 13,385.35 |
| 9-30-78 | 2,317.25 |
| TOTAL | $32,639.43 |

The failure of the Trustees to require that all expenses incurred were for the exclusive purpose of defraying reasonable expenses of administering the Plan appears to be in violation of Act Section 404(a)(1)(A). In addition, advances to parties-in-interest are prohibited by Act Section 406(a)(1)(B) unless exempted by Act Section 408(c)(2). Interpretive Bulletin 75.6 states that an advance to a fiduciary or other party-in-interest to cover expenses to be properly and actually incurred are not prohibited by Section 406. if the parties account to the Plan at the end of the period covered by the advance. The failure of the Trustees and parties-in-interest to properly account to the Plan appears to make 408(c)(2) inapplicable and therefore result in a 406(a)(1)(B) violation.

The Plan's Trust Agreement (EXH 2, p. 4) prohibits the Trustees from receiving compensation. Therefore, the above advances cannot be considered compensation for the purpose of applying Act Section 414(c)(4) without violating Act Section 404(a)(1)(D).

2. Loss to the Plan

The total loss to the Pension Plan is $32,639.43 as computed above.

3. Violators as Fiduciaries

The Trustees for the period of these violations were identical to those described in Section VII A.3. of this report.

4. Timeliness of Violation

The investigation indicates that these violations occurred on or after the effective date of the Fiduciary Standards of ERISA and were not subject to the limitation of actions as prescribed by Act Section 413.

5. Position of Fiduciaries

The Trustees of the ILA L/S PENSION PLAN have refused to meet, with representatives of the DOL, individually. Since the DOL policy is to meet with the Board Members individually and not as a group, no Trustee closing interviews were conducted. Therefore, the Trustees' position, with regards to these potential violations, could not be obtained (EXH 11).

D. The Trustees have failed to secure adequate bonding as required by Act Section 412(a) of the ERISA.

1. Description of Violation

In accordance with Act Section 412 of the ERISA this Pension Fund is required to have a minimum bond of $1,000 to a maximum of $500,000, based on funds handled. A bonding computation performed during this investigation indicates a requirement that this Fund be bonded in the amount of $500,000 for the fiscal year beginning 10-1-78 (EXH 30).

Currently the Pension Fund is jointly bonded with the LONGSHOREMEN'S WELFARE AND VACATION FUNDS (EXH 30). The named insured is the "INTERNATIONAL LONGSHOREMEN'S ASSOCIATION EMPLOYEES' PENSION, WELFARE AND VACATION FUNDS." The bond, which is a blanket crime policy, provides for coverage of $500,000. It covers the one year period beginning 3-1-79 and ending 3-1-80. The policy was issued by the FEDERAL INSURANCE COMPANY which is an approved surety named in the Federal Register.

This bond is insufficient in that it does not permit recovery by this Pension Fund or the LONGSHOREMEN'S WELFARE AND VACATION FUNDS of an amount equal to that which would be required if the funds were bonded separately. ERISA Regulation Section 2550.412-1 refers to the Regulations under WPPDA Section 13 for determination of bonding requirements. WPPDA Regulations Sections 464.17(a) and (d) are controlling. The three funds would require bonding in the fiscal year ended 9-30-79 as follows, based on fiscal 1978 assets and income.

| FUND | 10-1-78 ASSETS | FISCAL '78 INCOME | TOTAL FUNDS HANDLED | (EXH 64) BONDING REQUIRED (10% Rounded) |
|---|---|---|---|---|
| L/S Pension | $6,518,060 | $1,358,587 | $7,876,647 | *$500,000 |
| L/S Welfare | 900,212 | 1,353,072 | 2,253,290 | 225,400 |
| L/S Vacation-Holiday | 1,747 | 555,830 | 557,577 | 55,800 |
| | | TOTAL BONDING REQUIREMENT | | $781,200 |

*Limited to $500,000

In addition, the above bond does not have a pay-over rider which would provide that any reimbursement collected on a bond will be for the benefit and use of the plan suffering the loss (at least up to the statutory bonding minimum) or a combination of the two. The rider or agreement must clearly be enforceable by all plans that do not have other direct recourse on the bond. WPPDA Regulations Section 464.19 covers the pay-over rider requirement. Currently there is a pending, completed, bonding investigation on this PENSION FUND and several other related ILA employee benefit funds. The prior investigation revealed that the funds were without bonding because no surety would write a bond due to the adverse publicity generated by the indictment of several ILA officials. This Fund and related others had bonding coverage until December 31, 1977 and did not become bonded again until March of 1979. Reference Case Number 42-4579(49) Miami Area Office. The bonding secured in March of 1979 is inadequate, as discussed above in violations of Act Section 412.

2. Violations as Fiduciaries

The following were trustees during the period in which these violations occurred and were Fiduciaries within the meaning of Act Section 3(21) (See Section IV. A. of this report).

| EMPLOYER | EMPLOYEE |
|---|---|
| Gerard Fox | Landon Williams |
| J. A. Kaufmann, Jr. | James M. Stark, Jr. |
| Warren Anderson | Jack Land |
| Raymond King | Clarence Rodgers |
| | Lewis Jones |

3. Timeliness of Violations

The investigation indicates that this violation occurred on or after the effective date of the Fiduciary Standards of ERISA and were not subject to the limitations of actions as prescribed by Act Section 413.

4. Position of Fiduciaries

The Trustees of the ILA L/S PENSION PLAN have refused to meet, with representatives of the DOL, individually. Since the DOL policy is to meet with the Board Members individually and not as a group, no Trustee closing interviews were conducted. Therefore, the Trustees' position, with regards to these potential violations, could not be obtained (EXH 11).

E. The trustees have failed to properly allocate joint income and joint expenses between the L/S ROYALTY PLAN, the LONGSHOREMEN'S, and the WAREHOUSEMEN's PENSION, WELFARE AND VACATION/HOLIDAY PLANS. This appears to be in violation of Act Section 404(a)(1)(A and B) and 406(b)(2).

1. Description of Violation

The employer contributions were received and deposited into an escrow account. From the escrow account, the contributions were transferred to the PENSION C&S ACCOUNT, the VACATION/HOLIDAY CHECKING ACCOUNT, and the WELFARE OPERATING ACCOUNT (EXH 32). Funds that were in excess of current requirements were invested in T.C.D.'s in order to productively utilize the funds. However, the income earned on these investments were not allocated to all plans having an equitable interest in the funds invested (EXH 43).

In addition, all expenses for the LONGSHOREMEN'S PENSION, VACATION/HOLIDAY, AND WELFARE PLANS, the WAREHOUSEMEN'S PENSION, VACATION/HOLIDAY, AND WELFARE PLANS and THE EMPLOYEES ROYALTY FUND were paid out of the LONGSHOREMEN'S WELFARE OPERATING ACCOUNT. As with the income, these expenses were not properly allocated to all plans.

As a result of the above failure to properly allocate income and expenses, the L/S PENSION PLAN "FUND" balance as of 9-30-78 was overstated by $162,674.81.

| | FYE 9-30-75 | FYE 9-30-76 | FYE 9-30-77 | FYE 9-30-78 | TOTAL |
|---|---|---|---|---|---|
| Pension's Equitable Share of Admin. (EXH 43) | $39,470.16<br>(1975, L/S p.4) | $43,113.83<br>(1976, L/S p.2) | $76,492.67<br>(1977, L/S p.2) | $73,778.56<br>(1978, L/S p.2) | $232,855.22 |
| Pension's Equitable Share of Residual Earnings (EXH 43) | 8,062.43<br>(1975, L/S p.10) | 4,022.30<br>(1976, L/S p.8) | (2,714.34)<br>(1977, L/S p.8) | (10,113.44)<br>(1978, L/S p.8) | (743.05) |
| Pension's Equitable Share of Joint Expenses (EXH 43) | (80,788.35)<br>(1975, L/S p.8) | (103,846.92)<br>(1976, L/S p.6) | (112,132.63)<br>(1977, L/S p.6) | (100,411.38)<br>(1978, L/S p.6) | (397,179.28) |
| Miscellaneous Benefits Paid (EXH 43) | -0-<br>(N/A) | -0-<br>(N/A) | -0-<br>(N/A) | 2,392.30<br>(1978, L/S p.7) | 2,392.30 |
| | ($33,255.76) | ($56,710.79) | ($38,354.30) | ($34,353.96) | |
| | | | TOTAL FUND BALANCE OVERSTATEMENT | | ($162,674.81) |

As stated above, all expenses were paid out of the L/S WELFARE OPERATING ACCOUNT. The Trustees allocated a portion of total contributions received to pay joint administrative expenses. These administration expense allocations were not separately accounted for in the operating account, instead they were included in the total funds transferred to that account. During the period 10-1-74 to 9-30-78, there were $548,555.79 (EXH 43-1975, L/S 3, line 41; 1976, L/S 1 line 38; 1977 L/S 1, line 38; 1978 L/S 1, line 37) allocated for joint administrative expenses for the L/S PLANS and $38,044.82(EXH 43, 1975, W/H 2, line 33; 1976 W/H 1, line 33; 1977 WH 1, line 33; 1978, W/H 1, line 33) for the W/H PLANS providing total funds of $586,600.61 for joint expenses. Over the same period, the L/S joint expenses and W/H joint expenses were $1,047,082.71 (EXH 43, 1975 Summary line 26, clm. 10; 1976 Summary, line 24, clm. 10; 1977 Summary, line 24, clm 10; 1978 Summary, line 24, clm. 10). The expenses in excess of amounts allocated for joint expenses $460,482.10 were not charged back to the individual plans. As shown above, the Pension's share of the administrative allocations for the period were $232,855.22. The Pension's share of joint expenses was $397,179.28. Therefore, the Pension failed to absorb $164,324.06 of its equitable share of joint expenses ($397,179.28 - $232,855.22).

In addition, as stated above, the Trustees did not allocate residual income to the plans having an equitable interest in the investments. Residual earnings for the period 10-1-74-9-30-78 were $492,525.12 as follows (EXH 23):

| | FYE 9-30-75 | FYE 9-30-76 | FYE 9-30-77 | FYE 9-30-78 | TOTAL |
|---|---|---|---|---|---|
| Longshore<br>(EXH 23) | $120,632.75<br>(1975, p. 8) | $ 78,533.99<br>(1976, p. 8) | $ 74,867.98<br>(1977, p. 8) | $ 65,619.30<br>(1978, p. 5) | |
| WAREHOUSE<br>(EXH 23) | 6,185.25<br>(1975, p. 20) | 4,390.40<br>(1976, p. 20) | 6,491.64<br>(1977, p. 20) | 8,710.69<br>(1978, p. 6) | |
| ROYALTY<br>(EXH 23) | 27,278.44<br>(1975, p. 27) | 31,012.17<br>(1976, p. 27) | 31,290.22<br>(1977, p. 27) | 37,512.29<br>(1978, p. 7) | |
| | $154,096.44 | $113,936.56 | $112,649.84 | $111,842.28 | $492,525.12 |

The Pension equitable share of this income over the 9-30-74-9-30-78 period was a net of ($743.05) (EXH 43, Summary, p. 3)

The unabsorbed expenses plus unallocated income less miscellaneous benefits paid is $162,674.81. This is the composition of the overstatement of the L/S PENSION PLAN'S "FUND" balance as of 9-30-78.

The failure of the trustees to charge joint expenses to all plans in an equitable manner appears to be in violation of Act Section 404(a)(1)(A), in that the fiduciaries did not discharge his duties with respect to the L/S PENSION PLAN for the exclusive purpose of defraying reasonable expense of administering the Plan. Furthermore, the failure to allocate income and expenses in an equitable manner appears to be in violation of Act Section 404(a)(1)(B) in that it is not prudent to understate the actual cost of operating a plan and actual income earned by a plan. Failure to recognize these items could result in the other related plans having claims against pension assets which are being held for payment of future pension benefits. If such claims were valid, future pension benefits could be jeopardized.

As stated in Section IV. A. of this report, there are common trustees for the L/S, W/H and ROYALTY PLANS. However, these plans do not have common participants, and any actions taken by the trustees that would be advantageous to one group of participants at the expense of another group would result in an adverse situation that could be in violation of Act Section 406(b)(2) (EXH 25, 26 and 27). The failure of the trustees to properly charge each fund with its equitable portion of expenses and give each fund credit for earnings on residual income appears to create such a situation as described above. Therefore, Act Section 406(b)(2) appears to have been violated by these trustee actions.

2. Loss to the Plan

   The Pension Plan has not substained any losses due to the above actions. However, the failure to properly absorb its share of administration expenses could result in other plans having future claims on pension assets.

3. Violators as Fiduciaries

   Same as Section VII(A)(3) of this report.

4. Timeliness of Violations

   The investigation indicates that the violations occurred on or after the effective date of the Fiduciary Standards of ERISA and were not subject to the limitations of actions as prescribed by Act Section 413.

5. Position of Fiduciaries

   The Trustees of the ILA L/S PENSION PLAN have refused to meet, with representatives of the DOL, individually. Since the DOL policy is to meet with the Board Members individually and not as a group, no Trustee closing interviews were conducted. Therefore, the Trustees' position, with regards to these potential violations, could not be obtained (EXH 11).

F. The Trustees have caused the Plans to reimburse and pay educational expenses of the Plan's Attorney, MR. CLARK TOOLE. This appears to be in violation of Act Section 406(a)(1)(D). The Trustees have caused the Plan to pay legal expenses without insuring the reasonableness of the charges and without requiring proper accounting for such charges. This appears to be in violation of Act Section 404(a)(1)(A).

1. Description of Violation

   MR. CLARK TOOLE, Attorney, is presently receiving a retainer fee of $10,000 per year (EXH 12). This fee was increased from $7,500 to $10,000 on February 17, 1978, effective January 1, 1978. In addition to the retainer, MR. TOOLE charges the Plans for various legal services rendered (EXH 47). He is also reimbursed for attending educational conferences presented by the INTERNATIONAL FOUNDATION and the Plan pays his dues to the FOUNDATION (EXH 41, Summary, p. 1).

   During the period 10-1-74 to 9-30-78, MR. TOOLE received the following:

|  | *RETAINER | *PROFESSIONAL SERVICES | **TRAVEL EXPENSES | **DUES | **REGIS-TRATION FEES | **ROOM DEPOSIT | TOT |
|---|---|---|---|---|---|---|---|
| FYE 9-30-75 | 5,250 |  | 890.73 | 200. | 165. | 42. |  |
| FYE 9-30-76 | 7,500 |  | 1,791.47 | 200. | 180. | 42. |  |
| FYE 9-30-77 | 5,625 | 750. | 3,778.00 | 200 | 570. | 204. |  |
| FYE 9-30-78 | 8,750 | 4,367.74 | 1,330.00 | 225. | 450. | 142. |  |
|  | $27,125 | $5,117.74 | $7,790.20 | 825. | 1,365. | 430. |  |
|  |  |  |  |  |  |  | $42,652 |

*(EXH 47)
**(EXH 41)

The invoices rendered to the Fund by MR. TOOLE did not disclose the nature of services being performed for the Plans (EXH 47, p. 15...). However, when specific work was performed for the Plans, MR. TOOLE detailed the work performed and billed the Plan separately for that work (EXH 41, p. 42, 48, 52). For example, MR. TOOLE charged the Plans $750.00 for professional services rendered in connection with collection of delinquent contributions from UNITED TRAILER SERVICES (EXH 47, p. 42). Another charge was made, by MR. TOOLE of $3,910.70 in connection with a Grand Jury Subpoena (EXH 47, p. 52). Still another charge during the FYE 9-30-79 of $6,782.53 was made to bring the LONGSHOREMEN'S and WAREHOUSEMEN'S PENSION PLANS into compliance with ERISA (EXH 47, p. 56).

Per MR. TOOLE, the retainer was for attending Trustee meeting and being available day or night to assist the Trustees and administrator. He further stated that he did not keep records of the time he spent assisting the above (EXH 11). The investigation revealed that during the period 10-1-74 to 9-30-78, MR. TOOLE attended 24 Trustee meetings (EXH 10).

Per MR. TOOLE, there was no written contract between himself and the Plans (EXH 11). The investigation did not reveal any attempts by the Trustees to insure that MR. TOOLE's fees were reasonable. However, MR. TOOLE's retainer was increased from $3,000 to $7,500 effective 1-1-75 and to $10,000 effective 1-1-78 (EXH 12).

Act Section 404(a)(1)(A) requires that the Trustees discharge their duties with respect to a plan for the exclusive purpose of defraying reasonable expenses of administering the plans. Failure of the Trustees to insure that payments for legal fees are reasonable could violate Act Section 404(a)(1)(A). In view of the documentation presented, it appears that these expenses could be unreasonable. If so, the Trustees are in violation of Act Section 404(a)(1)(A).

In addition, MR. TOOLE is a party-in-interest to the plans as defined by Act Section 3(14). MR. TOOLE is a Service Provider to the Funds and is receiving compensation for such services.

During the period 1-1-75 to 9-30-78, the Plan Trustees paid MR. TOOLE's INTERNATIONAL FOUNDATION dues, registration fees, room deposits and travel expenses to International Foundation Seminars (EXH 41, Summary, p. 1). Act Section 406(a)(1)(D) states that a Trustee shall not cause the Plan to engage in a transaction if he knows or should know that such a transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party-in-interest, of any assets of the Plan. Since MR. TOOLE is a party-in-interest, as a result of the legal services he provided to the plans, the additional payments of his dues, registration fees, room deposits, and travel expenses appear to be a transfer of plan assets for the use of a party-in-interest. If true, this would be in violation of Act Section 406(a)(1)(D).

2. Loss to the Plan

In regards to the retainer paid to MR. TOOLE, loss to the Plan cannot be computed. MR. TOOLE did provide some services to the Plan, however, the extent of those services could not be determined. Documentation furnished by the Plan, for his retainer, was not sufficiently detailed as to the nature of the charges.

In regards to the travel, dues, registration fees, and room deposits, they appear to be prohibited transactions. If true, then the entire amount should be returned to the Plans. A total of $10,410.20 was paid to MR. TOOLE for these expenses. The Pension portion of this expense would be $4,914.72. This is computed as follows:

| PERIOD | (EXH 41) AMOUNT | **PENSION CONTRIBUTION ALLOCATION | TOTAL ALLOCATED TO PENSION |
|---|---|---|---|
| FYE 9-30-75 | *1,297.73 | 872,000.96<br>2,226,252.10 | $ 508.31 |
| FYE 9-30-76 | 2,213.47 | 1,038,517.30<br>2,676,540.10 | 858.84 |
| FYE 9-30-77 | 4,752.00 | 1,110,182.23<br>2,943,622.22 | 2,787.65 |
| FYE 9-30-78 | 2,147.00 | 1,171,630.35 | 759.92 |
|  | $10,410.20 | $3,310,193.13 | $4,914.72 |

*All FYE 9-30-75 payments were made after 1-1-75.

**(See Section VII.C. of this report regarding allocation formula)

3. Violators as Fiduciaries

Same as Section VII(A)(3) of this report.

4. Timeliness of Violations

The investigation indicates that the violation occurred on or after the effective date of the Fiduciary Standards of ERISA and were not subject to the limitations of actions as prescribed by Act Section 413.

5. Position of Fiduciaries

The Trustees of the ILA L/S PENSION PLAN have refused to meet, with representatives of the DOL, individually. Since the DOL policy is to meet with the Board Members individually and not as a group, no Trustee closing interviews were conducted. Therefore, the Trustees' position, with regards to these potential violations, could not be obtained (EXH 11).

G. The Plan Trustees have caused the Plan to pay compensation to Plan Trustees also known as "Joint Committee" or "Committee" (EXH 6, 7). Section 4 of the Plan Trust Agreement, Section 9.07 of the Plan Document as restated October 1, 1976, and Section 5.8 of the Plan Document dated July 1, 1958, states that the Trustees and committee shall not receive compensation for performance of their duties (EXH 21, 6, 7). The above payments do not appear to be in accordance with Plan Documents. If true, this could be in violation of Act Section 404(a)(1)(D).

1. Description of Violation

The Plan Trustees hold meetings at irregular times throughout the year (EXH 10). The Trustees have caused the Plan to compensate themselves for these meetings at the rate of $50.00 per Trustee per meeting (EXH 48, p. 1). The Trust Agreement dated September 26, 1957, Part 4, states "The Trustees SHALL not receive compensation out of the funds administered by them for the performance of their duties." (EXH 2, p. 4). In addition, the Trustees are also known as the "Joint Committee" or "Committee" for the purpose of the ILA EMPLOYEE PENSION PLAN (EXH 7, p.4, EXH 6, p. 6).

Per Section 5.8 of the July 1, 1958, ILA PENSION PLAN DOCUMENT as restated by Section 9.07 of the October 1, 1976, restated ILA PENSION PLAN, "the members of the Committee SHALL serve without compensation for the performance of their duties hereunder" (EXH 6, p. 14, EXH 7, p. 37, 38). Therefore, it appears that any form of compensation paid to the Trustee or committee members would be in violation of the Plan Documents. If so, this would be in violation of Act Section 404(a)(1)(D).

The investigation did not reveal any amendments to the 1957 Trust Agreement or the 1976 restated Pension Plan Document in reference to the above compensation sections.

2. Loss to the Plan

There were payments totaling $4,185.10 made to the Trustees. These payments were made as follows (EXH 48, p. 3):

| | PERIOD 1-1-75-9-30-75 | FYE 9-30-76 | FYE 9-30-77 | FYE 9-30-78 | TOTAL |
|---|---|---|---|---|---|
| Williams | 250.00 | 250.00 | 150.00 | 50.00 | 700.00 |
| Rodgers | 250.00 | 250.00 | 150.00 | 100.00 | 750.00 |
| Anderson | 200.00 | 150.00 | | | 350.00 |
| Stark | 250.00 | 200.00 | 150.00 | 150.00 | 750.00 |
| Fox | 250.00 | 150.00 | 100.00 | 50.00 | 550.00 |
| Kaufmann | 250.00 | 250.00 | 150.00 | 50.00 | 700.00 |
| King | -0- | 100.00 | 100.00 | -0- | 200.00 |
| Land | -0- | -0- | -0- | 79.20 | 79.20 |
| Jones | -0- | -0- | -0- | 105.90 | 105.90 |
| | $1,450.00 | $1,350.00 | $800.00 | $585.10 | $4,185.10 |

Since the payments were not authorized by the Plan documents, they appear to the losses to the Plans.

The Pension portion of these payments is $1,608.72. Computed as follows:

| PERIOD | (EXH 48)<br>AMOUNT | *PENSION % | TOTAL |
|---|---|---|---|
| FYE 9-30-75 | 1,450 | $\frac{872,000.96}{2,226,252.10}$ | 567.95 |
| FYE 9-30-76 | 1,350 | $\frac{1,038,517.30}{2,676,540.10}$ | 523.81 |
| FYE 9-30-77 | 800 | $\frac{1,140,182.23}{2,943,622.22}$ | 309.87 |
| FYE 9-30-78 | 585.10 | $\frac{1,171,630.35}{3,310,190,13}$ | 207.09 |
|  | $ 4,185.10 |  | $1605.72 |

*See Section VII.C. of this report regarding allocation formula.

3. Violators as Fiduciaries

Same as Section VII.A. 3 of this report.

4. Timeliness of Violations

The investigations indicate that the violations occurred on or after the effective date of the Fiduciary Standards of ERISA and were not subject to the limitations of actions as prescribed in Act Section 413.

5. Position of Fiduciaries

The Trustees of the ILA L/S PENSION PLAN have refused to meet, with representatives of the DOL, individually. Since the DOL policy is to meet with the Board Members individually and not as a group, no Trustee closing interviews were conducted. Therefore, the Trustees' position, with regards to these potential violations, could not be obtained (EXH 11).

H. MR. LANDON L. WILLIAMS is the employee co-chairman of the LONGSHOREMEN'S PENSION, WELFARE AND VACATION-HOLIDAY FUNDS; the WAREHOUSEMEN'S PENSION, WELFARE AND VACATION-HOLIDAY FUNDS and the EMPLOYEES ROYALTY FUND, located in Jacksonville, Florida. MR. WILLIAMS has allowed, for consideration, UNITED TRAILER SERVICES, INC., a participating employer, to contribute less than the proper amount of contributions due to the LONGSHOREMEN'S PENSION, WELFARE AND VACATION-HOLIDAY FUNDS. This appears to be in violation of Act Section 406(b)(3).

1. Description of Violation

UNITED TRAILER SERVICES, INC. (hereafter UTS, Inc.) began operating a container repair service in Jacksonville, Florida in the latter part of June 1975. UTS, INC., pursuant to a Written Agreement, agreed to make payments to the LONGSHORE PLANS at specified rates (EXH 4, p. 25). During the period from 7-1-75 through early 1977 MR. GILLESPIE was President of UTS, INC. (EXH 49, p. 3). MR. GILLESPIE has testified, in the case of United States vs. George Barone No. 78-185-Cr-WMH in the District Court of the United States for the Southern District of Florida, to the fact that UTS, Inc. made payoffs to LANDON L. WILLIAMS for labor peace (EXH 49, p. 20,22, 25,26). MR. GILLESPIE further testified that, in order to get the money for some of the early payoffs to MR. WILLIAMS, payments due the LONGSHORE WVP PLANS were withheld and UTS, INC. records were altered to reflect a lessor number of hours worked by employees (EXH 49, p. 30, 67). Further, some employees were not contributed on for the early days of operation. MR. GILLESPIE stated that it was his suggestion to do this underreporting to the LONGSHORE FUNDS, to generate the Funds for payoff money, and that MR. WILLIAMS agreed to this method of generating the Funds for payoffs (EXH 49, p. 30, 31). MR. GILLESPIE testified that the payments to MR. WILLIAMS continued from 1975 through January of 1977 (EXH 49, p. 70).

Act Section 406(b)(3) states that "a fiduciary with respect to a plan shall not receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan." As a Trustee, MR. WILLIAMS is a fiduciary as defined by Act Section 3(21).

As a participating employer, employing plan participants, UTS, INC. is a party-in-interest as defined by Act Section 3(14).

MR. GILLESPIE testified that UTS, INC. did not have the initial payoff amount of $3,000 (EXH 49, p. 30). MR. GILLESPIE testified that he suggested to MR. WILLIAMS that the payment to the LONGSHORE WVP PLANS be underreported, by deleting contributions on several employees, so that the $3,000 payment could be made. GILLESPIE testified that LANDON WILLIAMS agreed to this underreporting to the LONGSHORE WVP PLANS (EXH 49, p. 30, 31). The investigation and audit of UTS, INC. will be completed as soon as records can be obtained. The testimony of MR. GILLESPIE indicates there are additional contributions due, but the amount cannot be computed without UTS, INC. records currently in possession of the U. S. Department of Justice. The Department of Justice would not release these records without a 6-E Order (EXH 50).

In the above actions, MR. WILLIAMS appears to have received consideration for his own personal account from UTS, INC. in connection with transactions involving contributions of the LONGSHORE WVP PLANS. This appears to be in violation of Act Section 406(b)(3).

2. Loss to the Plan

The loss to all the plans and the Pensions share of the loss will be computed and the results forwarded as soon as the records of UTS, INC. can be reviewed.

3. Violators as Fiduciaries

The investigation revealed that MR. LANDON WILLIAMS was a Trustee during the period in which these violations occurred and was a fiduciary within the meaning of Act Section 3(21).

4. Timeliness of Violations

The investigation indicates that these violations occurred on or after the effective date of the Fiduciary Standards of ERISA and were not subject to the limitations of actions as prescribed by Act Section 413.

5. Position of Fiduciaries

MR. WILLIAMS refused to meet with the representatives of DOL in regards to this matter, except as a member of the entire Board of Trustees. Since it is Department policy to hold only individual interviews, no meeting was held. Therefore, no position is being presented for the plan Fiduciaries (EXH 11).

## VIII. OTHER FINDINGS

### A. General

1. The IRS Check Lists were completed for this Plan. The DOL Auditors and Investigators were interviewed by Representatives of IRS. This case has been assigned to an IRS Agent for further action on their part.

2. The Trustees of this plan are covered by a Fiduciary Insurance policy, issued by Aetna Casualty and Surety Company, Hartford, Connecticut 06156. This policy, (Policy Number 11FF189BCA), has been in effect since 5-23-75 (EXH 65, p. 26). It has been renewed through 5-23-80 (EXH 65, p. 6). This policy provides coverage of up to $1,000,000 (EXH 65, p. 34).

   Prior to this policy, the trustees had Errors and Omissions Liability Insurance with Aetna Casualty and Surety, policy number 01DK5, effective 9-1-73 through 9-1-76 (EXH 65, p. 23). This policy provided coverage of $1,000,000 (EXH 65, p. 25).

### B. Alleged Violations not Substantiated by the Investigation

1. The investigation did not reveal any indication of double billing. All expenses were paid out of one account, therefore, with the exception of LANDON WILLIAMS, it was not possible for the trustees to receive double payments. Since MR. WILLIAMS was also the President of LU 1408, he could have received reimbursement through the union. However, no evidence was developed to indicate this was happening. Appropriate inter-office referral to make further inquiry under the LMRDA has been initiated.

   The trustees were not stringent with regards to requiring proper accounting to the Plans for advances made to the trustees. In several instances it appeared that trustees received advances for conferences which they did not attend. This was covered earlier in this report.

2. The investigation did not reveal any widespread deficiencies in reported contributions among non-indicted employers. One employer, Transport Refrigeration, had received a refund of contributions made in error after the expiration of the one year limit on refunds. Only minor discrepancies were found on the other non-indicted employer audits.

The indicted employers have not been audited. The records of United Trailer are still in the possession of the U. S. Department of Justice. These records are to be relased to the DOL Auditor in the near future. Audits will be performed on these indicted employers and the results forwarded at a later date as a supplement to this report.

C. Possible Violations Discovered During the Investigation

1. The CPA Financial Statements did not appear to be in conformity with Act Section 103. Some problems noted with these statements are:

    a. Comparative statement of assets and liabilities at current value were not presented

    b. The statements prepared by MEEK and MCLEOD did not have any notes to the Financial Statements

    c. The statements prepared by RALPH HOCHMAN were in a consolidated form with the three Longshoremen's and three Warehousemen's Plans being grouped together.

2. Employees of the GAI Fund, were participating in the L/S Pension and L/S Welfare Funds. There were no written agreements or Plan Documents that set forth the basis of this participation. The acceptance of the contributions and the allowing of participation by the trustees could be in violation of Act Section 404.

3. In accordance with memorandum agreements, certain employers were allowed to reduce their contributions by the amount attributable to the Holiday allocations (EXH 4). These employers, not contributing Holiday contributions, furnished their employees Holiday benefits. However, the trustees did not take these reductions into consideration when they determined the amounts to be distributed to each Fund. As a result, the Pension and Welfare Funds received less than their share of total contributions. The failure of the trustees to reduce the Vacation/Holiday allocations by the amounts paid by the employers could be in violation of Act Section 404.

4. The Plan Administrator and Plan Trustees have failed to maintain records in an orderly fashion. At the beginning and continuing throughout the investigation, the Plan's records were scattered throughout the offices of the L/S Welfare Fund. There were no books or records; bank statements were filed in a disorderly manner in various filing cabinets; statement of assets and liabilities were not maintained; invoices and receipts were not filed; Plan Documents and Governmental filings could not be located. As a whole, the office was in disarray and the Fund employees were unable, though willing, to locate needed records. The failure of the trustees to properly administer the Plans appear to be in violation of Act Section 404.

5. The Collective Bargaining Agreement sets forth a lump-sum contribution which, per the trust agreement, is allocated to the various Funds by the trustees. Since these trustees are common to plans having different participants, it appears that this lump-sum contribution requirement places the trustees in a position that results in the trustees acting adversely, in any actions taken by them. Thus the requirement that the trustees allocates the lump-sum could result in a violation of Act Section 406(b)(2).

6. Neither the Plan Administrator, Attorney nor the CPA could provide the IRS ruling or tax exempt status of the Vacation/Holiday and Welfare Funds. The failure of the trustees to insure that the Plans are being operated within the statutes governing such plans appears to be in violation of Act Section 404.

7. The Plan Administrator could not provide any Plan Documents for the Vacation/Holiday Fund except for a 1957 Trust Agreement. This Trust Agreement appears obsolete. No amendment has been made to bring it up to date. The Trust Agreement covered the Pension, Welfare and Vacation/Holiday Plans. The failure of the trustees to properly prepare trust documents could be in violation of Act Section 402 and 404.

8. The firm of JOHNSON and HIGGINS was hired as actuaries for the Pension Plan. In addition this company received commissions from Provident Life and Accident Insurance Company on policies sold to the Plans (EXH 66). This action could be in violation of Act Section 406.

9. A review of the L/S Welfare Claims documentation revealed that claims were filed in chronological order instead of numerical. This seriously impaired the detection of unaccounted for forms and checks. A review of the documentations did not reveal any discrepancies; however the potential for payment of improper claims exists under the present system.

   The failure of the trustees to insure proper accounting for benefits paid (EXH 67) could be in violation of Act Section 404.

10. The Plan Administrator, MARION JOHNSON, hired his son, ROMIA JOHNSON, as a bookkeeper for the Funds, on 5-9-72. While in this position, ROMIA JOHNSON embezzled approximately $11,000 from the Employees Royalty Fund, Warehousemen's Vacation/Holiday Fund and Longshoremen's Welfare Fund. The continued employment of ROMIA JOHNSON after 6-30-77 was in violation of Act Section 406(b)(1). The failure of the trustees to insure that applicable statutes are not violated is in violation of Act Section 404.

11. The Plan trustees have no shop audit program. Although the investigation did not disclose serious problems with non-indicted employer contributions, the fact that some employers could alter their records in order to acquire funds to make payoffs to LANDON WILLIAMS indicates that a shop audit program is necessary. The failure of the trustees to insure proper payments of employer contributions appears to be in violation of Act Section 404.

The CHAIRMAN. Are you familiar with the supplemental report of investigation dated January 18, 1980?

Mr. DAY. Yes; I am.

The CHAIRMAN. As I understand it, it was prepared by one of your auditors; right?

Mr. DAY. Yes, sir.

The CHAIRMAN. OK. We will enter that report in the record, without objection, as Day Document No. 2.

[Day Document No. 2 follows:]

Day Dec. #2

U.S. Department of Labor

Labor-Management Services Administration
1371 Peachtree Street, N. E.
Room 300
Atlanta, Georgia 30309

Reply to the Attention of: LFA

January 21, 1980

MEMORANDUM FOR: EDWARD F. Daly, Assistant-
Administrator for Enforcement/PWBP

FROM: WILLIAM D. SEXTON
Regional Administrator

SUBJECT: Jacksonville ILA Longshoremen's and
Warehousemen's Funds, Case Nos.
42-04605 through 42-04610

Enclosed is a supplemental report submitted by Miami Area Office on the subject cases. This report includes additional information on Landon Williams who has continued to serve as a trustee of the funds.

Enclosure

cc: Area Administrator
Miami Area Office

RECEIVED
OFFICE OF ENFORCEMENT
PWBP
JAN 25 1980

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Washington Square Office Building - 111 N.W. 183rd Street, Suite 504
P. O. Box 3750, Norland Branch
Telephone No. (305)350-4611 Miami, Florida 33169

DATE: January 18, 1980

REPLY TO ATTN OF: Carl E. Crouch CEC
Area Administrator, Miami

SUBJECT: Jacksonville ILA Longshoremen's and Warehousemen's Pension, Welfare and Vacation/Holiday Plans

THRU: William Sexton
Regional Administrator, Atlanta

TO: Mr. Edward Daly
Director, PWBP, OE

Transmitted herewith is a supplementary report to be associated with the previously submitted Action Reports of Investigation on the subject Plans. This supplementary report discloses that the plans lost $9,143.89 as a result of the actions of Landon Williams.

Since the submission of the original ROI, Mr. Williams has been indicted in Jacksonville, Florida on various criminal charges. This is in addition to having been convicted in the earlier Miami trials. The Jacksonville proceedings are now in the discovery phase. No further information is available, in regards to these proceedings, at this time.

In view of the foregoing, we still strongly believe legal action should be promptly taken to remove Mr. Williams from his position as trustee and co-chairman.

It should be noted that the above cases were investigated concurrently. Therefore this supplementary report should be attached to each of the individual ROI's.

Attachments

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Washington Square Office Building - 111 N.W. 183rd Street, Suite 504
P. O. Box 3750, Norland Branch
Telephone No. (305)350-4611 Miami, Florida 33169

DATE: January 18, 1980 CEC

REPLY TO
ATTN OF: Carl E. Crouch
Area Administrator, Miami

SUBJECT:

International Longshoremen's Association (ILA) Pension, Welfare and Vacation/Holiday Plans

xxx

International Longshoremen's Association (ILA) Warehousemen's Pension, Welfare and Vacation/Holiday Plans

EIN 59-0834277-001
59-0834277-501
59-0842662-003
59-0834277-002
59-0834277-502
59-0842662-004

CASE #42-4605
42-4606
42-4607
42-4608
42-4609
42-4610

THRU: Mr. William Sexton
Regional Administrator, Atlanta

TO: Mr. Edward Daly
Director, PWBP, OE

This is a supplement to the original Reports of Investigation for the above plans. As previously reported, Mr. Landon Williams, the employee co-chairman of the Jacksonville ILA Employee Benefit Plans, had allowed, for personal consideration, participating employers to contribute less than the proper amounts of contributions due to the above mentioned plans. Due to the unavailability of records, the actual losses to the plans could not be computed at the time the original ROI's were submitted. The records have since become available and have been reviewed. The results are detailed below.

Per a memorandum agreement between United Trailer Services, Inc. (UTS) and Landon Williams, Local Union 1408 President, effective July 1, 1975, UTS agreed to make contribution into the Jacksonville ILA Employee Benefit Plans (EXH 1A). As previously reported, Mr. Gillespie, President of UTS, testified in Federal Court that UTS had made payment to Landon Williams for labor peace. Further, he testified that UTS records had been altered to reflect lessor contributions due the above funds, in order to obtain the cash needed for the payoff. (EXH 2A (also see original ROI Exhibits). The initial payoff was reported to be approximately $5,000.

A review of UTS payroll records established that the bulk of the unreported contributions appeared to be in the 3rd and 4th quarters of 1975 (EXH 3A). Thereafter, although there were some delinquency problems, (EXH 4A) the contributions appeared to be reported correctly (EXH 3A).

The analysis of the payroll records indicated that there were $3,939.33 and $5,204.56 in unreported contributions due for the 3rd and 4th quarters of 1975 respectively (EXH 3A). It appears, that in order to obtain the $5,000 cash needed for the payoff to Mr. Williams, UTS failed to contribute the above $9,143.89. Therefore, this amount would be the loss to the plans. If the above is true, then this would be in violation of Act Section 406(b)(3).

The **Chairman**. The original report of investigation states on page 31 that "Mr. Williams appears to have received consideration for his own personal account" from United Trailer Services, Inc. in connection with transactions involving contributions to the longshoremen, to the longshore welfare, vacation, and pension funds. The supplemental report we just mentioned found a contribution deficiency on the part of United Trailer Services of $9,143.89 in what should have been paid into these plans in the third and fourth quarters of 1975. Now how do you know that these contributions were due but not paid and that Mr. Williams personally benefited?

Mr. **Day**. From the testimony of a Mr. Gillespie, who was president of United Trailer Services. Mr. Gillespie testified as to the number of kickbacks, the amounts, the dates. We used that information to go into United Trailer's books and records, audit those books and records for late 1975, and we actually did some in 1976 also, and found that according to the method of the payoff—and that was that Mr. Gillespie would under-report or not report on individuals working in that company—we actually found that in the company and the result of that were some $9,000 that were not paid——

The **Chairman**. Therefore, you were actually, by being able to go in and audit their books as well as the union books, you were able to find out that these discrepancies did exist and in fact he had taken the $9,000 or thereabouts.

Mr. **Day**. Yes, sir.

The **Chairman**. According to a January 17, 1978, FBI interview with Mr. Gillespie, about $22,000 in bribes were paid to Mr. Williams by Gillespie from 1975 to 1977. Are you familiar with that document?

Mr. **Day**. Yes, sir.

The **Chairman**. We will enter that document into the record without objection at this point as Day Document No. 2(a).

[Day Document No. 2(a) follows:]

Pay document # 21

FEDERAL BUREAU OF INVESTIGA

Date of transcription January 27, 1978

ROBERT FRANCIS GILLESPIE, 12688 Firethorn Lane, Jacksonville, Florida, was interviewed at the office of the Intelligence Division, Internal Revenue Service, 400 West Bay Street, by the reporting agent and SAs BRENDA JONES and LARRY E. WINE, Intelligence Division, Internal Revenue Service, and the following information was obtained:

GILLESPIE stated that with regard to the $3,000 which was paid to LANDON L. WILLIAMS, President, International Longshoremans Association Local 1408, Jacksonville, Florida, on October 3, 1975, by he and JOEY COTRONE in Jacksonville, Florida, the money for the payoff was generated in the following manner.

GILLESPIE was again permitted to view check number 479 in the amount of $500 which was dated September 30, 1975, and which had been previously viewed by GILLESPIE on January 18, 1978. The check had been drawn on the Florida National Bank at Arlington and had been signed by STEVEN MILLER, former Vice President, United Trailer Services, Inc., (UTS) and GILLESPIE. The check had been endorsed by FRED HYRE, former bookkeeper for UTS. GILLESPIE stated that cashing of check 479 by HYRE on or about September 30, 1975, probably depleted all of the remaining funds in the UTS account which had been at the Florida National Bank at Arlington. GILLESPIE stated that to the best of his recollection, he had had HYRE cash this check in anticipation of a payoff having to be made to WILLIAMS in the near future.

GILLESPIE was again permitted to view check number 102 dated October 3, 1975, in the amount of $2500 which he had previously been permitted to view on January 18, 1978. Check number 102 was drawn on the Barnett Bank of North Jacksonville and had been made out to ROBERT F. GILLESPIE. The check had been signed by GILLESPIE, MILLER, and JOSEPH COTRONE and had been endorsed by GILLESPIE. GILLESPIE stated that the proceeds from check number 102 together with the proceeds from check number 479 totaled $3,000 and had been paid to WILLIAMS by JOSEPH COTRONE on October 3, 1975, for the purpose of insuring labor peace

Interviewed on 1/21/78 at Jacksonville, Florida File # JK 183-67

by SA GERALD M. COLLINS /acw Date dictated 1/24/78

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

for UTS.

At the meeting which occurred on October 3, 1975, between GILLESPIE, JOSEPH COTRONE, and WILLIAMS, GILLESPIE suggested that because UTS was unable to raise the money for the payoff, it may be necessary to delete at least 30 days welfare and pension contributions by UTS from its payroll. GILLESPIE advised that this would involve the pension and welfare contributions for seven International Longshoremans Association (ILA) employees of UTS which had been hired on August 26, 1975. This would involve ILA employees JOE POPE, BENNY WILLIAMS, TOMMY TORRANCE, DONALD ROUNDTREE, BERNARD BERRY, GEORGE FORT, and DEWEY STEVERSON. The amount of pension and welfare contribution per man per hour was at that time $2.21.

WILLIAMS agreed that in order for him to be paid his requested .25 cents per man per hour per day as a payoff which would total approximately $3,000 since the inception of UTS, it would be necessary for UTS to delete 30 days contribution to the ILA pension and Welfare fund for the seven ILA employees. GILLESPIE stated that the deletion of the pension and welfare contributions would permit UTS to accomulate $3,712.80, $3,000 of which was paid to WILLIAMS by JOEY COTRONE on October 3, 1975.

GILLESPIE advised that the Dome payroll ledger utilized by UTS during that particular time period should reflect that the seven above mentioned ILA employees initiated work with UTS on or about August 26, 1975. The ILA pension and welfare contribution records both at UTS and in the ILA Pension and Welfare Office in Jacksonville should reflect that pension and welfare contributions by UTS were not made until sometime around the beginning of October, 1975. GILLESPIE stated that it was not an exact 30 days deletion for each of the seven employees, rather some were deleted for a week and others for up to 60 days.

GILLESPIE advised that on September 4, 1975, Puerto Rican Marine Management, Incorporated (PRMMI), Blount Island, Jacksonville, Florida, provided seven additional ILA employees who were as follows: SAMPSON WILLIAMS, MAC CORBETT, JOE BEVEL, BARRY LOWRY, RICHARD LEE, MARVIN BANNISTER, and L. C. SWILLEY. The UTS pension and welfare contribution concerning these individuals were not affect

At the October 3, 1975, meeting, GILLESPIE was assured by WILLIAMS that there would be no problem with MARION JOHNSON, Administration, ILA Pension and Welfare, Jacksonville, Florida, with regard to the variance which would be reflected concerning the deletion of the above stated pension and welfare contributions which were to have been made by UTS.

GILLESPIE advised that when the next payment was due sometime during the latter part of October or early part of November, 1975, he was contacted by WILLIAMS by telephone concerning the $1,000 which was to be paid to WILLIAMS by GILLESPIE. GILLESPIE told WILLIAMS that he had calculated that only $800 was due to WILLIAMS during that particular month because at a rate of .25 cents per man per hour per day, a full $1,000 would be an overpayment. WILLIAMS replied to GILLESPIE, "If you don't have $1,000, don't bother with it." GILLESPIE understood that remark by WILLIAMS to mean that WILLIAMS expected a $1,000 payment for that month and nothing less.

GILLESPIE advised that he made payments of $1,000 each to WILLIAMS for the months of November and December, 1975, but was unsure as to which checks had been cashed for this purpose. GILLESPIE was permitted to view UTS check number 235 in the amount of $2,500 dated November 12, 1975, and made to the order of MILLER. The check was signed by GILLESPIE and MILLER and endorsed by MILLER. GILLESPIE stated that it was possible that $1,000 for the month of November to pay to WILLIAMS had been obtained through the cashing of this check but he could not be sure.

GILLESPIE was also permitted to view UTS check number 291 in the amount of $1,500 made out to cash and dated December 5, 1975. The check had been signed by both MILLER and GILLESPIE and endorsed by LARRY DENNIS who was the general manager of UTS at that time. GILLESPIE advised that it was possible that a $1,000 payment to WILLIAMS had been obtained through the cashing of this check but again he could not be certain.

GILLESPIE was certain, however, that $1,000 payments had been made for the months of November and December, 1975, to WILLIAMS. GILLESPIE also recalled that during November and December of 1975, the UTS financial situation was critical and it was extremely difficult to obtain the necessary funds to make the payoffs to WILLIAMS.

GILLESPIE was permitted to view UTS check number 1007 dated December 22, 1975, in the amount of $1250. This check was made out to cash and was signed by both MILLER and GILLESPIE, and endorsed by GILLESPIE. The check was drawn on an account with the Barnett Bank of North Jacksonville.

GILLESPIE stated that this check was cashed on December22, 1975, and $1,000 cash was obtained by GILLESPIE to give to WILLIAMS as a "Christmas bonus".

GILLESPIE elaborated that sometime around December 24, 1975, he took the $1,000 in cash in an envelope to WILLIAMS' office where GILLESPIE met with WILLIAMS and gave WILLIAMS the money.

GILLESPIE recalled that while he was at WILLIAMS' office for the short period in which he gave the money to WILLIAMS, he observed several envelopes which appeared to bear return addresses for the Sealand Corporation. One of the envelopes was addressed to MELVIN ANDREWS, Vice President, ILA Local 1408, and the other was addressed to PAUL FIELDS, Business Manager and Treasurer for ILA Local 1408. GILLESPIE stated that he could not tell what was in the envelopes but it prompted him to ask WILLIAMS if GILLESPIE should provide some type of Christmas present to ANDREWS and FIELDS. WILLIAMS replied that GILLESPIE had "no obligation" to those two men and GILLESPIE subsequently gave the two men each a case of Chivas Regal Scotch Whiskey.

GILLESPIE believed that at the time he went over to give WILLIAMS the Christmas money for 1975, CASSIE TAYLOR, secretary for WILLIAMS, may have been in the office as well as OLIVER COLLINS, Financial Secretary.

GILLESPIE recalled that he had driven his own car down to the office on that date.

GILLESPIE stated that to the best of his recollection, WILLIAMS told GILLESPIE during that same meeting that henceforth, WILLIAMS was desirous of receiving the $1,000 a month payoffs in one payment every six months of $6,000. WILLIAMS told GILLESPIE that WILLIAMS was "tired of looking for you". GILLESPIE understood this remark to mean that WILLIAMS was tired of having to call GILLESPIE each time a payment was due.

GILLESPIE stated that although check number 1007 was in the amount of $1250, only $1,000 was paid to WILLIAMS and the remaining $250 was probably used for either a Christmas party or some other UTS obligation.

GILLESPIE was permitted to view UTS check number 1109 dated January 28, 1976, in the amount of $6500. This check was made out to ROBERT GILLESPIE and was signed by GILLESPIE. The check was drawn on the Barnett Bank of North Jacksonville and was deposited into GILLESPIE's personal checking account number 46-05992 at the Florida National Bank at Arlington, Jacksonville, Florida. GILLESPIE put the check into his personal account on or about January 28, 1976.

GILLESPIE was permitted to view his personal check number 372 drawn on the Florida National Bank at Arlington, account number 46-05992. This check was dated February 4, 1976, and was made out to cash in the amount of $3,000. The check reflected that "house" was the memo for the check.

GILLESPIE explained that his personal check number 372 was cashed by his wife, DONNA GILLESPIE, on February 4, 1976, and that the $3,000 which had been obtained in the cashing of the check had been given to GILLESPIE by his wife.

GILLESPIE was permitted to view UTS check number 1132 in the amount of $3,000 and made out to cash, drawn on the Barnett Bank of North Jacksonville. The check was endorsed by GILLESPIE.

GILLESPIE explained with regard to the above three checks, check number 1109, check number 372, and check number 1132, that GILLESPIE had been authorized to borrow $6500 from UTS for the purchase of his house in Jacksonville. However, on or about February 4, 1976, it again was necessary to make a payment to WILLIAMS and this time the payment would have to be $6,000 to cover the next six months. Because UTS could not afford to loan $6500 to GILLESPIE for the purchase of the house and also pay $6,000 to WILLIAMS, GILLESPIE was assisted financially by MILLER who subsequently loaned GILLESPIE $3,000 on June 22, 1976, by writing check number 173 out of his personal account at the Florida National Bank of Arlington. This check was deposited to GILLESPIE's personal account, number 46-0599-2 on June 22, 1976, so that GILLESPIE could make a payment on GILLESPIE's house. The check which had been cashed by MILLER was UTS check number 1453 made out to MILLER in the amount of $3,000 dated April 30, 1976. The check was also drawn on the Barnett Bank of North Jacksonville. MILLER deposite this check to his personal account on May 17, 1976, as part of a deposit totaling $3,485.

Sometime around February 4, 1976, it was necessary for GILLESPIE to make the $6,000 payoff to WILLIAMS and GILLESPIE took $6,000 cash and placed it in an envelope. GILLESPIE recalled that he and JOSEPH COTRONE went down to the office of WILLIAMS and arrived there during a period in which ROOSEVELT WILLIAMS, twin brother of LANDON WILLIAMS, had been in the process of contesting the recent local ILA president elections. GILLESPIE stated that when he arrived at WILLIAMS' office, WILLIAMS was in conference and had come out of the conference to meet with GILLESPIE. To the best of GILLESPIE's recollection, JOEY COTRONE went along with GILLESPIE to make the payment and in fact, JOSEPH COTRONE handed the money to WILLIAMS. GILLESPIE recalled that WILLIAMS placed the money in his pocket. GILLESPIE stated that to his best recollection, CASSIE TAYLOR, secretary for WILLIAMS, was in the reception room and the other ILA officials were in the back conference room.

GILLESPIE was permitted to view UTS check number 1621 in the amount of $6,000 and dated June 11, 1976. A check was made out to GILLESPIE and drawn on the Barnett Bank of North Jacksonville. The check was also endorsed by GILLESPIE. GILLESPIE stated after having viewed the above check that the money obtained from the cashing of this check was again used to pay WILLIAMS on that same day, June 11, 1976.

GILLESPIE recalled that GILLESPIE was wearing tan jean type slacks and that he placed the money in a manila covered envelope and placed the envelope in his left hip pocket. GILLESPIE then went to WILLIAMS' office where he observed TAYLOR in the reception area. FIELDS and ANDREWS were in the office area. GILLESPIE stated that the money made a large bulge in his pocket and when he went in to see WILLIAMS in private and handed the envelope to WILLIAMS, he requested that WILLIAMS give him some paper and the envelope back so that he could walk out of the office with the same type of bulge in his rear pocket and not arouse the suspicion of the other ILA employees. WILLIAMS complied, took the money, and gave GILLESPIE the envelope back together with some paper to place in the envelope. GILLESPIE placed the paper in the envelope, put the envelope back in his left hip pocket, and departed WILLIAMS' office.

GILLESPIE viewed UTS check number 2569 dated December 23, 1976, in the amount of $1500 and made to the order of MILLER. The check was drawn on the Barnett Bank of North Jacksonville and bore the endorsement of MILLER and GILLESPIE.

GILLESPIE stated that $1,000 cash obtained in the cashing of this check was also used to pay a Christmas bonus to WILLIAMS during December of 1976.

GILLESPIE recalled that MILLER wrote the check out but that GILLESPIE cashed the check at the bank. MILLER and GILLESPIE took a bottle of Chivas Regal Scotch Whiskey and placed $1,000 in cash of the $1500 from the check into the box containing Chivas Regal Scotch Whiskey. GILLESPIE recalled that it was actually $1,000 that was ultimately given to WILLIAMS rather than $1500. GILLESPIE was accompanied by MILLER on this occasion to the Holiday Inn Motel located at Golfair Boulevard and Interstate 95 in Jacksonville, Florida, where the two men met with WILLIAMS. Both men got into WILLIAMS' car and the liquor and money were given to WILLIAMS by the two men.

GILLESPIE viewed UTS check number 2613 in the amount of $3,000 dated January 10, 1976, and made out to the order of MILLER. The check was endorsed by MILLER. GILLESPIE stated that the date of the check was in error and that the actual date of the check was January 10, 1977.

GILLESPIE advised that MILLER cashed the check and gave the money to GILLESPIE, after which GILLESPIE went to the Jacksonville ILA Office and met with WILLIAMS. GILLESPIE discussed the recent problem GILLESPIE had been having in having to lay off certain ILA workers at UTS. GILLESPIE was desirous of laying off according to skill rather than senority because of the work which needed to be done on refrigerated equipment. Prior to the meeting, GILLESPIE had telephoned WILLIAMS at the ILA office for the purpose of arranging a meeting with WILLIAMS in order to make a payment of $3,000 to WILLIAMS and to discuss the labor problem which GILLESPIE needed to resolve.

When GILLESPIE went over to the ILA Office and met with WILLIAMS sometime around January 10, 1977, GILLESPIE gave WILLIAMS a white envelope containing $3,000 in cash.

GILLESPIE advised that based upon his review of UTS records to date, he recalled that exactly $22,000 was paid to WILLIAMS for the purpose of obtaining labor peace for UTS during the period from mid-1975 until March of 1977.

GILLESPIE advised that JOSEPH COTRONE had made arrangements for UTS to handle the repairs of 75 chassis belonging to Sealand Corporation and which were to be shipped to Saudi Arabia. Sometime during late February or early March of 1976, GILLESPIE and MILLER met with JOHN O. TILTON, Maintenance Manager, Southern District, Sealand Corporation, Jacksonville, Florida, and JACK MERKLE, also of Sealand Corporation, at the Thunderbird Motel located on the Arlington Expressway in Jacksonville, Florida, for lunch. MERKLE had flown down from New York and the men discussed the flat rate scheule which was to be applied to the repairing of the Sealand chassis. UTS was to submit an hourly rate and the mechanics of this matter were discussed after lunch.

ROBERT J. BRENNER, former president, Streaker Marine Services, Inc., Charleston, South Carolina, and R. G. ELLIS of that same company also may have come down from Charleston and on the following day met with GILLESPIE, MILLER, TILTON, and MERKLE concerning the repair of the chassis.

GILLESPIE advised that he was not certain at this time, but he believed that during the telephone call between GILLESPIE and JOSEPH COTRONE which occurred prior to the above meetings, JOSEPH COTRONE told GILLESPIE that TILTON was to receive $20 per chassis repaired by UTS. BRENNER was also to receive $20 per chassis repaired by Streaker Marine.

After the Sealand deal was finalized, GILLESPIE recalled that BRENNER and ELLIS frequently telephoned GILLESPIE or MILLER at UTS concerning advice with regard to container repair and billing procedures. GILLESPIE thought it odd that Streaker Marine apparently was fully equipped for container and chassis repair, however, this was probably the first occasion in which Streaker Marine had conducted such repairs. GILLESPIE advised that it seemed strange that equipment which is usually accumulated after doing business for some time had been initially acquired by Streaker Marine without having conducted any business. GILLESPIE also noted that BRENNER and ELLIS arrived in the area in a Lincoln Mark IV automobile which GILLESPIE believed was very poor for the image of container repair company owners. GILLESPIE stated that, in short, it appeared that a large sum of money had been invested into Streaker Marine.

GILLESPIE stated that repairs of chassis by UTS for Sealand began in March of 1976 and after having reviewed the books of UTS, GILLESPIE was able to state that the first payment from Sealand was received at UTS on April 29, 1976.

Shortly thereafter, JOSEPH COTRONE called GILLESPIE and told GILLESPIE that TILTON had apparently been calling JOSEPH COTRONE on a number of occasions and that "TILTON had been crying". GILLESPIE understood this remark by JOSEPH COTRONE to mean that TILTON had been complaining to JOSEPH COTRONE that TILTON had not been paid.

GILLESPIE and MILLER decided how much TILTON was to be paid and GILLESPIE advised that after having reviewed the UTS bookkeeping records, he believed that UTS check number 1467, dated May 6, 1976, and in the amount of $500 was the check used to obtain the cash to pay TILTON during the early part of 1976. The check was made to the order of GILLESPIE and had been endorsed by GILLESPIE and drawn on the Barnett Bank of North Jacksonville. The amount had been filled out by GILLESPIE.

GILLESPIE stated that to the best of his recollection, he placed $500 in cash in an envelope and met TILTON at the Gator Bowl Inn Lounge on Friday, May 7, 1976.

GILLESPIE advised that he met TILTON at the Gator Bowl Inn Lounge bar and sat next to TILTON at the bar. GILLESPIE gave TILTON the white envelope containing the cash and GILLESPIE made several notations on the envelope so as to make it seem as though GILLESPIE had merely passed a note to TILTON. When GILLESPIE handed the envelope to TILTON, GILLESPIE told TILTON that this was with regard to the "deal you had with JOEY".

GILLESPIE stated that by the end of April, 1976, UTS had repaired approximately 57 chassis for Sealand. UTS had used the flat rate schedule which the two companies had agreed upon and the bills being sent to Sealand per chassis were relatively high. The Sealand Corporation complained and cut back the amount of work to be done on the chassis. Since most of the profit to be made by UTS was in labor and much of this labor had been cut back, the amount of profit realized by UTS diminished.

GILLESPIE believed that he explained this matter to TILTON when he gave TILTON the $500 in order to show why the amount of money was not as much as TILTON probably had expected. After reviewing the UTS records, GILLESPIE recalled that the bills for Sealand chassis dropped from $1,000 per chassis to $327 per chassis on April 14, 1976. GILLESPIE advised that there was enough "fat" in the flat rate schedule to allow for $20 per chassis to be given to TILTON. After the cut back, however, GILLESPIE was of the opinion that UTS could not afford to pay TILTON any more money. GILLESPIE also recalled a comment told to him by JOSEPH COTRONE on a previous occasion with regard to any payoffs, "If you pay him a dollar, charge him three dollars".

GILLESPIE stated that to the best of his recollection, JOSEPH COTRONE told GILLESPIE in a conversation that BRENNER had been "doing the same thing in Charleston", and that UMBERTO GUIDO, President, ANG Ship Repair, was "doing it with ANG in New York".

GILLESPIE stated that to the best of his knowledge, TILTON's area did not cover the New York portion. GILLESPIE had no knowledge concerning any illegal activities on the part of MERKLE.

GILLESPIE stated that sometime during the early part of 1977, either January or February, he observed TILTON at a small gas station located at the 20th Street Expressway and Phoenix Avenue in Jacksonville. Both men had driven their own cars into the service station. GILLESPIE began the conversation with TILTON by stating that GILLESPIE would get the rest of TILTON's money as soon as he could. TILTON replied by stating that he did not want it and TILTON inquired of GILLESPIE if UTS records reflected TILTON's name or if any money could be traced to TILTON. GILLESPIE assured TILTON that no money could be traced to TILTON. GILLESPIE understood the conversation to be regarding the $500 payoff which GILLESPIE had previously made to TILTON during the early part of 1976.

GILLESPIE recalled that TILTON and a TED DELAY of Sealand Corporation made frequent inspections of the chassis while UTS was making repairs.

GILLESPIE also recalled that on one occasion, he and MILLER considered giving TILTON a traffic radar detector unit for TILTON's automobile in an effort to appease TILTON and prevent UTS from having to make any more payoffs to TILTON.

GILLESPIE further recalled that the only time that GILLESPIE, JOEY COTRONE, and TILTON were ever together was on one occasion when they went to the Jacksonville Naval Air Station to view some rust inhibiting paint.

The **Chairman**. According to your report of Investigation dated October 24, 1979, which we have already entered into the record as Day document No. 1, Mr. Gillespie testified against Williams in the criminal trial in Miami that it was his suggestion to underreport contributions to the Longshore funds to generate funds for the payoff money, and that Mr. Williams agreed to this method of generating the funds for payoffs. Is that an accurate characterization of your report?

Mr. **Day**. As I understand that testimony, Mr. Gillespie did testify that that was the method of generating some of the funds for payoff, and Mr. Williams agreed.

The **Chairman**. Therefore, he agreed to do that by shorting the pension funds.

Mr. **Day**. Yes, sir.

The **Chairman**. You found the underreporting in the third and fourth quarters of 1975 to amount to over $9,000. Is that right?

Mr. **Day**. Yes, sir.

The **Chairman**. Now Mr. Gillespie stated in his interview with the FBI that his payments to Williams covered the period of mid-1975 to March 1977. It is my understanding you did not audit 1976 and 1977 also; is that right?

Mr. **Day**. No, sir. I reviewed the record—and for the record, the records are some 6 feet thick—and I have only spent this last week rereviewing some of the old documents. I find that we did audit some months in 1976. We found no problem in those months, and thereafter the United Trailer Services was on a computer and it was easier to verify that the contributions were actually paid on behalf of those that they should have been paid on behalf of.

The **Chairman**. Did you personally ever interview Mr. Gillespie?

Mr. **Day**. No; I did not.

The **Chairman**. Did you discuss Gillespie's role with the Justice Department prosecuting teams?

Mr. **Day**. Yes; I did.

The **Chairman**. Did they say Gillespie had been a good witness?

Mr. **Day**. Yes; they did.

The **Chairman**. A letter from the then-Miami area administrator, Mr. Carl E. Crouch, which accompanied your supplemental report of investigation of January 18, 1980, stated that in view of Williams 'conviction "we still strongly believe legal action should be promptly taken to remove Mr. Williams from his position as trustee and cochairman." This letter went to Mr. Edward Daly, Director of the Office of Enforcement in Washington, through Mr. William Sexton, the regional administrator in Atlanta. Your signature, "J. Day," is at the bottom of the letter. Did you concur with Mr. Crouch's recommendation to remove Williams?

Mr. **Day**. Yes, sir.

The **Chairman**. We will enter at this time as Day Document No. 3, that particular memorandum or letter.

[Day Document No. 3 follows:]

DAY #3

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Washington Square Office Building - 111 N.W. 183rd Street, Suite 504
P. O. Box 3750, Norland Branch

Telephone No. (305)350-4611 Miami, Florida 33169

DATE: January 18, 1980 CEC

REPLY TO ATTN OF: Carl E. Crouch
Area Administrator, Miami

SUBJECT: Jacksonville ILA Longshoremen's and Warehousemen's Pension, Welfare and Vacation/Holiday Plans

XX

THRU: William Sexton
Regional Administrator, Atlanta

TO: Mr. Edward Daly
Director, PWBP, OE

Transmitted herewith is a supplementary report to be associated with the previously submitted Action Reports of Investigation on the subject Plans. This supplementary report discloses that the plans lost $9,143.89 as a result of the actions of Landon Williams.

Since the submission of the original ROI, Mr. Williams has been indicted in Jacksonville, Florida on various criminal charges. This is in addition to having been convicted in the earlier Miami trials. The Jacksonville proceedings are now in the discovery phase. No further information is available, in regards to these proceedings, at this time.

In view of the foregoing, we still strongly believe legal action should be promptly taken to remove Mr. Williams from his position as trustee and co-chairman.

It should be noted that the above cases were investigated concurrently. Therefore this supplementary report should be attached to each of the individual ROI's.

Attachments

Day Document #5
33

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Washington Square Office Building - 111 N.W. 183rd Street, Suite 504
P. O. Box 3750, Norland Branch
Telephone No. (305)350-4611 Miami, Florida 33169

DATE: October 19, 1979

REPLY TO ATTN OF: Carl E. Crouch
Area Administrator, Miami

SUBJECT: International Longshoremen's Association (ILA)
Pension Plan
EIN: 59-0834277-001
Case #42-4605(48)

~~TO:~~ THRU William Sexton
Regional Administrator, Atlanta

TO: Mr. Edward Daly
Director, PWBP, OE

The investigation of the above ILA Pension Plan, revealed multiple violations of Act Section 404, Fiduciary Standards; Act Section 406, Prohibited Transactions; and Act Section 412(a), Bonding. Due to the volume, complexity, and the inter-relationships between the plans an explanatory exhibit is attached. Its purpose is to pictorially describe the relationship of this Plan, and its trustees, to other related ILA Plans (EXH 1).

There are seven ILA Plans which are administered as one. These are the ILA Longshoremen's (hereafter referred to as L/S) Pension, Welfare and Vacation/Holiday; the ILA Warehousemen's Pension, Welfare, and Vacation/Holiday; and the ILA Employees Royalty Fund. All expenses for these funds are paid from the L/S Welfare Operating Account. There are common trustees for these Plans. However, the Longshoremen and Warehousemen have different Collective Bargaining Agreements and cover different groups of participants.

There is also a Guaranteed Annual Income Fund which was established by the L/S Collective Bargaining Agreement. This covers Longshoremen only and LANDON WILLIAMS, Trustee, is the Employee Co-Chairman.

VIOLATION

The investigation established that the trustees caused the L/S Pension Plan to become indebted to the L/S Welfare Plan in the amount of $143,194.11. This was the result of transferring contributions allocated to the Welfare Plan to the Pension Plan, in violation of Act Section 404(a)(1)(D). In addition, the trustees of the L/S Pension Plan are also the trustees of the L/S Welfare Plan, however, these two plans have non-identical groups of participants. The transferring of Welfare assets to the Pension Plan could be adverse to the interest of the Welfare participants (and/or their beneficiaries). If so, this would be in violation of Act Section 406(b)(2).

## VIOLATION

The investigation established that the trustees of the L/S Pension Plan allowed the South Atlantic Guaranteed Annual Income Fund, the ILA Employees Royalty Fund, and Local Union 1408 to remit contributions based upon a lesser number of hours than their employees actually worked. As a result, the Pension Fund lost $77,752.18 in contributions and results in violations of Act Sections 404(a)(1)(D) and 406(a)(1)(B).

## VIOLATION

The investigation also established the Trustees, Plan Administrator and Attorney received advances to cover expenses of attending International Foundation Seminars. However, the Trustees failed to require proper accounting for these advances. During the period from 1-1-75 to 9-30-78, there were $32,639.43 in unsubstantiated Pension Fund travel expenses. The above action appears to be in violation of Act Section 404(a)(1)(A) and 406(a)(1)(B).

## VIOLATION

The investigation further revealed that the L/S Pension Plan was not properly bonded, in violation of Act Section 412(a) and is presently under-bonded because surety companies are unwilling to write coverage due to the adverse publicity generated by the indictment of several ILA officials.

## VIOLATION

The investigation revealed that joint expenses and joint residual income were not properly allocated among the ILA Funds. All expenses are currently paid from the L/S Welfare Fund. The Trustees allocated a portion of total contributions to cover joint expenses. However, this allocation was not sufficient to pay total joint expenses. As a result, the L/S Welfare Plan had to absorb the excess expenses. The trustees did not reallocate the excess joint expenses back to the other Plans. In addition, the bulk of joint income was deposited into the L/S Welfare account. However, the trustees did not allocate the earnings to the Plans on an equitable basis. As a result of the above actions, the Pension Plan's fund balance was overstated by $162,674.81 as of 9-30-78. The failure of the trustees to properly charge each Fund with its equitable portion of expenses and give each Fund credit for earnings on residual income appears to be in violation of Act Section 406(b)(2).

VIOLATION

The investigation revealed that the Pension Plan Trustees reimbursed educational expenses of the Fund's attorney, MR. CLARK TOOLE. MR. TOOLE was a party-in-interest as a result of his legal services to the Plan. Therefore, the payments of MR. TOOLE'S educational expenses appear to be a transfer of plan assets for the use of a party-in-interest. As a result of the above, total expenses of $10,410.20 were reimbursed to MR. TOOLE. The Pension Fund's share of these expenses was $4,914.72. Other than for specific work performed, MR. TOOLE did not provide any documentation justifying his billings. These actions appear to be in violation of Act Section 406(a)(1)(D). The Trustees' failure to insure reasonableness and require documentation could be in violation of Act Section 404(a)(1)(A).

VIOLATION

The investigation disclosed the Plan trustees were receiving compensation for attending trustees meetings. Both the Plan's Trust Agreement and Plan Documents prohibit the payment of compensation to the trustees for the performance of their duties. During the period 10-30-74 to 9-30-78, the trustees received $4,185.10 in compensation, of which $1,608.72 was attributable to the L/S Pension Plan. The payment of this compensation appears to be in violation of the Plan's Documents. If so, this would be in violation of Act Section 404(a)(1)(D).

VIOLATION

The investigation disclosed MR. LANDON WILLIAMS, Employee Trustee and Co-Chairman, allowed, for consideration, United Trailer Services, Inc. to contribute less than the proper amount of contributions to the ILA Pension Plan and other related Plans. The records of this firm are under the custody of the U. S. Department of Justice and thus were not available during this inquiry. The amount of the underpayments will be determined when these records are released to us which we expect in the near future. The above actions by MR. WILLIAMS appears to be in violation of Act Section 406(b)(3).

GENERAL COMMENTS

MR. LANDON WILLIAMS, the employee co-chairman participated in the hiring of his wife as Assistant Administrator for the GAI Fund in late 1972. In addition, he recently hired his son as a Royalty Inspector. During interviews with the various Fund employees, it was disclosed that all those interviewed consider MR. WILLIAMS their "Boss."

MR. MARION JOHNSON indicated that LANDON WILLIAMS, who is also President of LU 1408, had arranged the December 1978 Royalty Fund payout to coincide with his reelection bid.

Due to problems with the Royalty Fund investments, large sums of L/S Employees Benefit Funds' assets were transferred to the Royalty Fund to make the December 1978 payout. Although there were no apparent losses as a result of these actions, the ability to exercise such control over various Fund's assets does not appear to be in the best interest of plan participants. MR. WILLIAMS has been convicted of accepting payoffs for labor peace. Therefore, it appears that the employers within the Jacksonville area are reluctant to challenge MR. WILLIAMS' authority. As a result neither the employer trustees or employee trustees, other than LANDON WILLIAMS, are able to act effectively in the operation of the Jacksonville ILA Employee Benefit Plans.

As a point of information, during the investigation, MR. MARION JOHNSON,(Administrator since the early 60's) was fired. This action appears to have been justified. Although MR. JOHNSON appeared to be an honest individual who was trying to do a good job, he did not have the technical ability to manage the several ILA Funds. As a result, the Fund's records were in total disarray. MR. JOHNSON had co-mingled the assets of the various ILA Funds and had not kept records sufficient to easily unscramble his actions. At the onset of the investigation the records were scattered throughout the L/S Welfare Office, and remain so.

## ADMINISTRATIVE COMMENTS

The Miami Area Office has not made any efforts to obtain voluntary compliance. The trustees have refused to be interviewed individually, therefore, their position cannot be reported. However, during the investigation, the Plan's Administrator, CPA, and attorney stressed that the trustees would be willing to follow the recommendations of the U. S. Department of Labor. However, it is doubtful that the trustees would voluntarily make restitution for assets that have been lost, as a result of previously described violations.

The trustees are covered by Fiduciary insurance. This policy is with Aetna Casualty and Surety Company in the amount of $1,000,000.

In view of the foregoing, it is recommended that legal action be taken against the Trustees for all losses to the Plan which have resulted from these violations of Act Sections 404 and 406.

Further, we strongly believe legal action should be promptly taken to remove MR. LANDON WILLIAMS from his position as trustee and co-chairman. In addition, action should be taken against the CPA Firms of MEEK and MCLEOD and RALPH HOCHMAN for their acts which appear to have contributed to the above described violations.

We recommend the Funds either have different Boards of Trustees (separate Board for each Fund) or renegotiate the Collective Bargaining Agreement to eliminate the need for the common trustees to allocate the lump-sum contributions. Moreover, we recommend the trustees be required to establish and maintain separate record-keeping systems for each of the Funds involved and all assets be redistributed to the correct Fund and the trustees be required to maintain and account for these assets within the framework of that entity.

Finally, the CPA firm of RALPH HOCHMAN erroneously consolidated the Financial Statements of the L/S Pension Plan with the other previously mentioned related Plans. These Financial Statements should be declared deficient and rejected. The Department of Labor should require the submission of more appropriate, separate Financial Statements.

It should be noted that case numbers 42-4606, 42-4607, 42-4608, 42-4609, 42-4610, 42-4735 and 42-4759 are related, and were investigated concurrently with this case. Thus, separate ROI's will follow promptly with a similar litigation recommendation.

The CHAIRMAN. Do you still concur with Mr. Crouch's recommendation to remove Williams from his position?

Mr. DAY. Yes, sir.

The CHAIRMAN. Mr. Day, are you aware that section 411 of ERISA requires the removal of convicted union leaders from fiduciary positions in employment benefit funds only upon completion of the appeal of their convictions in cases where lower court verdicts are appealed?

Mr. DAY. That is my understanding.

The CHAIRMAN. Is it your understanding that the law only makes removal of these officials mandatory upon loss of an appeal when an appeal is made but there are other discretionary tools available to the Labor Department that do not conflict with section 411 but merely facilitate an earlier removal?

Mr. DAY. Yes, sir.

The CHAIRMAN. I think we could say that of the plan participants, you felt that Williams should be removed as quickly as possible. Is that correct?

Mr. DAY. That was my recommendation.

The CHAIRMAN. Now one of the ways that that could have been done was in sections 502 and 409, which allow the Secretary of Labor to ask a court for removal of a fiduciary if he breaches "any of the responsibilities, obligations, or duties imposed on fiduciaries by this title." You were aware of that?

Mr. DAY. Yes, sir.

The CHAIRMAN. And you recommended that?

Mr. DAY. I did.

The CHAIRMAN. OK. The fiduciary breach on the part of Williams was section 406(b)(3) of ERISA dealing with bribery, and of course that is a serious fiduciary breach, isn't it?

Mr. DAY. Yes, sir.

The CHAIRMAN. You took the right course, at least in my opinion you took the right course but unfortunately you did not succeed because of a number of other factors that we are going to get into later in this hearing. Now as of today, Mr. Williams is still serving as president of the local and as trustee of the eight employee benefit funds associated with Local 1408, almost 3 years after his September 1, 1979, conviction. Is that not true?

Mr. DAY. Yes, sir.

The CHAIRMAN. The appeal of his conviction has not yet come up for a hearing in the appeals court. Is that right?

Mr. DAY. I believe the appeal is scheduled for June.

The CHAIRMAN. OK. Has the Labor Department audited the books of these eight employee benefit plans since Mr. Williams' conviction?

Mr. DAY. No, we have not.

The CHAIRMAN. What was your last audit of these funds completed?

Mr. DAY. The Jacksonville cases were completed in November 1979.

The CHAIRMAN. I see. In other words, you have no way of knowing whether any other financial irregularities have occurred since Mr. Williams' conviction.

Mr. DAY. That is true.

The CHAIRMAN. Are you familiar with the case in which Mr. Bernard Rubin misused some $2 million in union funds while he was still serving as a trustee for various pension and trust funds for the South Florida Laborers Union between the time of his lower court convictions for embezzlement in 1975 and his resignation in 1977?

Mr. DAY. Yes; I am.

The CHAIRMAN. Can we be sure that Mr. Williams is not doing the same thing?

Mr. DAY. We should but we are not sure.

The CHAIRMAN. We should but we are not, are we?

Mr. DAY. We are not sure.

The CHAIRMAN. Hasn't the Labor Department been able to get some sort of verification that things have straightened up at Local 1408 in the wake of Mr. Williams' criminal conviction?

Mr. DAY. I do not know.

The CHAIRMAN. Have any of you heard of any verification by the Labor Department that things are better? Mr. Sexton, have you?

Mr. SEXTON. No, sir.

The CHAIRMAN. Have you, Tim?

Mr. CLAYTON. The case is currently being worked on as far as voluntary compliance, and part of that process is a verification that since the last audit there in fact have been no defalcations. It is part of the process of attempting to settle the case.

The CHAIRMAN. However, as far as you know right now there has been no verification whether or not any further improper activities have occurred.

Mr. CLAYTON. No. In essence, discussions are being conducted right now involving those types of——

The CHAIRMAN. However, other than that, there have been no safeguards put around that fund or those funds, those eight funds.

Mr. CLAYTON. Other than that we are following up with our investigation, no.

The CHAIRMAN. OK. Mr. Day, who is responsible for assigning you to field audits?

Mr. DAY. Assigning the field audits? At this time the supervisory investigator targets cases, the Office of Enforcement targets cases, the regional office. There are several ways a case can be generated.

The CHAIRMAN. Have you been authorized by these people to go back and take another look at Williams' books since the date of his conviction?

Mr. DAY. I think I should defer to Mr. Sexton on that.

The CHAIRMAN. Well, I am asking you that question: Have you ever been authorized to go back and look at those books since the conviction? Yes or no.

Mr. DAY. Your statement seems to indicate, did I ask somebody could I go back?

The CHAIRMAN. No, no. I am just saying, have you ever been authorized to go back?

Mr. DAY. While we are in the process of voluntary compliance, trying to get the plan to voluntarily comply with some of the issues we found, we would not normally be back out there auditing.

The CHAIRMAN. You would not normally do that?

Mr. DAY. No, sir.

The CHAIRMAN. Therefore, you did not ask to go back and nobody suggested that you go back.

Mr. DAY. That is true. I know it has been considered.

The CHAIRMAN. Well, it seems to me that in cases like this it would pay to do so but, you know, I cannot determine the procedures. Hopefully we can pass this bill that will make this question moot, and hopefully we will pass it as strong as Mr. Ryan would like it but I have a suspicion that the committee will probably not do that. We will see. I would think everybody on the committee should be interested in protecting union workers' pension funds and trust funds.

Well, Mr. Day, as I look over your numerous reports from the 1979 audits, I really want to personally compliment you on the quality and comprehensiveness of these audits. I find numerous other irregularities with these employee funds. Would that be a fair statement, as well?

Mr. DAY. Yes, sir.

The CHAIRMAN. As I said, Mr. Day, these audits are superb. You have done a good job. I just personally wish that the Department had authorized you or that you had done more of them since 1979 so that we could get a window into what Mr. Williams has been doing with those funds.

Anyway, let's look in detail at your 1979 audit work. On page 35 of your October 24, 1979, Report of Investigation, you state that "The plan administrator, Mr. Marion Johnson, hired his son, Romia Johnson, as a bookkeeper for the funds on May 9, 1972. While in this position, Romia Johnson embezzled approximately $11,000 from the Employees' Royalty Fund, Warehousemen's Vacation Fund, and Longshoremen's Welfare Fund." Was Romia Johnson fired when his embezzlement was made known to union officials?

Mr. DAY. I do not believe he was fired, but he is not currently employed by the fund, nor was he employed by the fund while we were on site.

The CHAIRMAN. I see.

Mr. DAY. He was employed after June 30, 1977, as the report states.

The CHAIRMAN. According to a March 2, 1981, letter from Mr. William D. Sexton, the Atlanta Regional Administrator, to Mervyn Schwedt, the Acting Assistant Administrator for Enforcement, Mr. Romia Johnson was still serving as a bookkeeper for the funds as of November 29, 1979, which was the last time Labor had checked up on him prior to Mr. Sexton's memo, yet Mr. Johnson had been convicted of embezzlement of union funds on May 18, 1978, better than a year before. Now you are saying that it is inconceivable that Mr. Romia Johnson would still be employed down there, and you do not believe he is.

Mr. DAY. Yes, sir, that is true.

The CHAIRMAN. However, the other facts are true, aren't they, that he continued to be employed as a bookkeeper right up from his conviction on May 18, 1978, up until the end of your audit, which was November 29, 1979?

Mr. DAY. That was the date of the audit. I do not believe, to set the record straight, that Romia Johnson was employed after we were on site. I believe he was employed after June 30, 1977, as the report states.

The Chairman. Well, it is my understanding that he was there better than a year as bookkeeper after you had made your allegations. Again, I would suggest that is pretty serious stuff. Your own documents show that. In fact, their own document which is in the record shows that the facts as I have stated them are true.

Mr. Day. Senator, you are reading them correctly but the documents may be wrong with regard to Romia Johnson.

The Chairman. All right. You state on page 33 of the October 24, 1979, Report of Investigation that the plan trustees have no shop audit program, and you state that "The fact that some employers could alter their records in order to acquire funds to make payoffs to Landon Williams indicates that a shop audit program is necessary." Is that correct?

Mr. Day. Yes, sir.

The Chairman. Before we go any further, could you define the term "shop audit program" for us?

Mr. Day. Briefly, it is an audit of the employer's books and records to insure that the employer is remitting the correct contributions to the funds.

The Chairman. OK. Have any of the Jacksonville ILA funds instituted a shop audit program in the years since your last audit in 1979?

Mr. Day. I would not know.

The Chairman. I take it none of them had it before that time.

Mr. Day. We did not see any shop audits while we were on site. We conducted our own.

The Chairman. Now your Report of Investigation also found that the trustees of ILA Local 1408 pension plan had caused the plan to become indebted to other employee plans, even though there were different groups of participants in each of these plans. You found that the Longshore Pension Fund had been transferred some $143,000 in contributions from the other funds between fiscal years 1975 and 1978, and that the Longshore Vacation/Holiday Plan was shortchanged by $863,000 over this period. Has any of this money been pocketed by union trustees or is this simply a matter of their shifting money around to suit their own political or other purposes?

Mr. Day. Yes, sir. We did not find the funds missing. We did find them shifted between funds and we found that a violation of ERISA.

The Chairman. However, you would have to say that this was poor administration of the plans, wouldn't you?

Mr. Day. Yes, sir.

The Chairman. OK. Let's make sure that Day Document No. 4 is placed in the record at this point, which is a memorandum, this memorandum I have been referring to for Mervyn A. Schwedt.

[Day Document No. 4 follows:]

**U.S. Department of Labor**

Labor-Management Services Administration
1371 Peachtree Street, NE
Room 300
Atlanta, Georgia 30367
Reply to the Attention of: LFA

March 2, 1981

DAY #4

MEMORANDUM FOR: Mervyn A. Schwedt, Acting Assistant Administrator for Enforcement/PWBP

FROM: William D. Sexton
Regional Administrator

SUBJECT: International Longshoremen's Association Investigations

Attached is an analysis regarding whether or not any of the twenty (20) International Longshoremen's Association, hereafter the ILA, officials convicted (and within the geographic jurisdiction of the Atlanta Region) continued in positions of responsibility to employee benefit plans at the time the Report of Investigation (ROI) was prepared on each subject case.

It appears from our review that seven (7) of the convicted ILA officials were either employees of or serving in a fiduciary capacity to an employee benefit plan(s) at the time of the ROI.

This memorandum and attachment are a follow-up to our February 26, 1981 memorandum concerning the ILA investigations conducted by the Atlanta Region.

Attachment

cc: Sherwin Kaplan, Confidential Assistant to the Administrator/PWBP

✓Virginia Bartlett, Acting Chief, DFSI

Frederic M. Haas, AA/OFO

| Defendant | ILA Position(s) | Conviction/Date | ROI Review |
|---|---|---|---|
| 1. Alexander, Joseph | S-T Local 1422-A<br>Charleston, SC | Embezzlement of Union Funds/11-07-77 | ROI's Dated 11-20-79 and 04-03-80 - No Evidence of Unio Fund Affiliation |
|  | Related RO Cases - 40-09563(48)<br>40-09564(48)<br>40-07997(48) |  |  |
| 2. Clemon, Isom | Int'l VP; Pres.<br>Local 1410<br>Mobile, AL | Embezzlement of Union Funds/12-30-77 | ROI Dated 7-31-7 Was a Union Trus to Funds From 1-1-75 to 3-1-75 |
|  | Related RO Cases - 40-09566(48)<br>40-09567(48)<br>40-09568(48)<br>40-09607(48) |  |  |
| 3. Sigler, Helen B. | Mgr. & Asst. Treas.<br>ILA - Fed. Credit Union<br>Mobile, AL | Falsification of Credit Union Records/ 1-13-78 | No Jurisdiction |
| 4. *Johnson, Romia | Bookkeeper, ILA Welfare & Pension Adm.<br>Jacksonville, FL | Embezzlement of Employee Benefit Plan Funds/5-18-78 | ROI Dated 11-29- Still Employed a Bookkeeper |
|  | Related RO Case - 42-04759(48) |  |  |
| 5. Debose, Theodore | Member Local 1426<br>Wilmington, NC | Perjury/11-27-78 | ROI Dated 5-28-8 No Evidence of Union/Fund Affiliation |
|  | Related RO Cases - 40-09793(48)<br>40-09518(48) |  |  |
| 6. Formey, Albert W. | Member Local 1426<br>Wilmington, NC | Perjury/11-27-78 | ROI Dated 5-28-8 No Evidence of Union/Fund Affiliation |
|  | Related RO Cases - 40-09793(48)<br>40-09518(48) |  |  |
| 7. Lee, James Albert | Ret. Union Marshall<br>Local 1426<br>Wilmington, NC | Racketeering/11-27-78 | ROI Dated 5-28-8 No Evidence of Union/Fund Affiliation |
|  | Related RO Cases - 40-09793(48)<br>40-09518(48) |  |  |

| Defendant | ILA Position(s) | Conviction/Date | ROI Review |
|---|---|---|---|
| 8. Moore, Bernest E. | Member Local 1426<br>Wilmington, NC | Perjury/11-27-78 | ROI Dated 5-28-80 No Evidence of Union/Fund Affiliation |
| | Related RO Cases - 40-09793(48)<br>40-09518(48) | | |
| 9. *Dixon, George W. | Int'l VP<br>Exec. Bd. So. Atl & Gulf Coast; District Pres.<br>Local 1410<br>Mobile, AL | Embezzlement of Union Funds/ 1-26-79 | ROI Dated 7-31-79 Was a Union Trust to Funds From 1-1-75 to Date of ROI |
| | Related RO Cases - 40-09607(48)<br>40-09566(48)<br>40-09567(48)<br>40-09568(48) | | |
| 10. Bateman, Robert Lee | Pres. Local 1422-A<br>Charleston, SC | Conspiracy to Commit Racketeering/ 1-30-79 | ROI Dated 5-28-80 11-20-79 - No Evi ence of Union/Fun Affiliation |
| | Related RO Cases - 40-09563(48)<br>40-09564(48) | | |
| 11. *Barone, George | Int'l 2nd VP<br>Organizer Atl. Coast Distr.<br>Pres. Local 1922<br>Miami, FL | Racketeering, Extortion, Prohibited Payments, Tax Fraud/9-1-79 | Various ROI's Dat Feb, Mar, & Apr, 1980 Show as Unio Trustee to Funds Pres. Local 1922 at Time of ROI |
| | Related RO Cases - 42-04601(48)<br>42-04602(48)<br>42-04603(48)<br>42-04604(48)<br>42-04910(48)<br>42-04913(48) | | |
| 12. *Boyle, William | Int'l VP; Exec. Bd. Atl & Gulf Coast District; S-T<br>Local 1922<br>Miami, FL | Racketeering, Extortion, Kickbacks as Plan Adm., Prohibited Payments, Tax Fraud/9-1-79 | ROI's Dated Feb. Mar, Apr, 1980 Sh as Union Trustee Funds at Time of |
| | Related RO Cases - 42-04603(48)<br>42-04604(48)<br>42-04610(48)<br>42-04613(48) | | |

| Defendant | ILA Position(s) | Conviction/Date | ROI Review |
|---|---|---|---|
| 13. *Turner, Cleveland | Exec. Bd, Atl & Gulf Coast District; Pres. Local 1416 Miami, FL<br>Related RO Cases - 42-04603(48)<br>42-04604(48)<br>42-04610(48)<br>42-04613(48) | Racketeering, Prohibited Payments/ 9-1-79 | ROI's Dated Feb, Mar, & Apr, 1980 Show as Union Trustee to Funds at Time of ROI |
| 14. *Vanderwyde, James (a/k/a Cornelius ?) | Coord. Atl & Gulf Coast District; Office Mgr. Local 1922 Miami, FL<br>Related RO Cases - 42-04603(48)<br>42-04604(48)<br>42-04610(48)<br>42-04613(48) | Racketeering, Extortion, Prohibited Payments/9-1-79 | ROI's Dated Feb, Mar, & Apr, 1980 - Show as Union Trustee to Funds at Time of ROI |
| 15. *Williams, Landon L. | Int'l VP; Exec. Bd. So. Atl & Gulf Coast District; Pres. Local 1408 Jacksonville, FL<br>Related RO Cases - 42-04605(48)<br>42-04606(48)<br>42-04607(48)<br>42-04608(48)<br>42-04609(48)<br>42-04610(48)<br>42-04735(48)<br>42-04759(48) | Racketeering, Prohibited Payments/ 9-1-79 | ROI's Dated Oct, & Nov, 1979 Show Still as Pres. of Local & Union Trustee to Funds |
| 16. Leonard, Rutherford | Former Pres. Local 1426 Wilmington, NC<br>Related RO Cases - 40-09793(48)<br>40-09518(48) | Embezzlement of Union & Employee Benefit Funds/ 11-19-79 | ROI Dated 5-28-80 No Evidence of Uni Fund Affiliation |
| 17. Sutton, Willie L. | Bus. Agent Local 1426 Wilmington, NC<br>Related RO Cases - 40-09793(48)<br>40-09518(48) | Embezzlement of Union Funds/11-19-79 | ROI Dated 5-28-80 No Evidence of Uni Fund Affiliation |

| Defendant | ILA Position(s) | Conviction/Date | ROI Review |
|---|---|---|---|
| 18. Seaton, Grover<br>— — * | Pres. Local 1766<br>Wilmington, NC | Embezzlement of Union Funds (Dismissed)/11-19-79 | ROI Dated 5-28-80<br>No Evidence of Uni<br>Fund Affiliation |
| | Related RO Cases - 40-09793(48)<br>40-09518(48) | | |
| 19. Green, Floyd | Financial Secretary<br>Local 1839<br>Southport, NC | Failure to Maintain Proper Union Records/11-20-79 | ROI Dated 5-28-80<br>No Evidence of Uni<br>Fund Affiliation |
| | Related RO Cases - 40-09793(48)<br>40-09518(48) | | |
| 20. Powell, Eddie | Former Pres. Local 1759<br>Tampa, FL | Embezzlement of Union Funds/9-3-80 | ROI's Dated Oct, &<br>Dec, 1979 Show No<br>Evidence of Union/<br>Fund Affiliation |
| | Related RO Cases - 42-04596(48)<br>42-04617(48)<br>42-04618(48) | | |

*At Time of ROI, Affiliated With Funds

The CHAIRMAN. Nonetheless, these transfers are, I would suggest, a poor business practice because they penalize a member of one fund who might not be a member of the fund to which his benefit money is being transferred. Wouldn't you agree on that?

Mr. DAY. Yes.

The CHAIRMAN. It is also a violation of ERISA, is it not?

Mr. DAY. Yes, sir.

The CHAIRMAN. In fact, it violates section 406(b)(2) of ERISA.

Mr. DAY. That is true.

The CHAIRMAN. In actual practice, the trustees of Local 1408's employee benefit funds increased pension benefits while decreasing vacation benefits, did they not?

Mr. DAY. Yes, they did.

The CHAIRMAN. By doing so, they penalized active workers who were counting on the promised number of holidays but were not yet drawing a pension. Would that be a fair statement?

Mr. DAY. Yes, sir.

The CHAIRMAN. As a result of these transactions, they cut paid holidays for warehousemen to three paid holidays, effective August 13, 1976. Is that your recollection?

Mr. DAY. Yes, sir, that is my recollection.

The CHAIRMAN. As a result of these transfers, employees injured on the job and being paid workers' compensation benefits would not be entitled to credits against vacation, holidays and royalty benefits as of September 30, 1976. Is that correct?

Mr. DAY. Yes, sir.

The CHAIRMAN. Mr. Day, a letter of October 19, 1979, from Miami area administrator Carl E. Crouch to Mr. Edward Daly, the Director of the Office of Enforcement in Washington, states that: "Mr. Marion Johnson indicated that Landon Williams, who is also president of Local 1408, had arranged the December 1978 royalty fund payout to coincide with his reelection bid. Due to problems with the royalty fund investments, large sums of longshore employees benefit fund assets were transferred to the royalty fund to make the December 1978 payout." Are you familiar with this letter?

Mr. DAY. Yes, sir.

The CHAIRMAN. Then, without objection, we will put this letter into the record as Day Document No. 5.

[Day Document No. 5 follows:]

Day Document # 5

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Washington Square Office Building - 111 N.W. 183rd Street, Suite 504
P. O. Box 3750, Norland Branch
Telephone No. (305)350-4611
Miami, Florida 33169

DATE: October 19, 1979

REPLY TO ATTN OF: Carl E. Crouch
Area Administrator, Miami

SUBJECT: International Longshoremen's Association (ILA)
Pension Plan
EIN: 59-0834277-001
Case #42-4605(48)

THRU William Sexton
Regional Administrator, Atlanta

TO: Mr. Edward Daly
Director, PWBP, OE

The investigation of the above ILA Pension Plan, revealed multiple violations of Act Section 404, Fiduciary Standards; Act Section 406, Prohibited Transactions; and Act Section 412(a), Bonding. Due to the volume, complexity, and the inter-relationships between the plans an explanatory exhibit is attached. Its purpose is to pictorially describe the relationship of this Plan, and its trustees, to other related ILA Plans (EXH 1).

There are seven ILA Plans which are administered as one. These are the ILA Longshoremen's (hereafter referred to as L/S) Pension, Welfare and Vacation/Holiday; the ILA Warehousemen's Pension, Welfare, and Vacation/Holiday; and the ILA Employees Royalty Fund. All expenses for these funds are paid from the L/S Welfare Operating Account. There are common trustees for these Plans. However, the Longshoremen and Warehousemen have different Collective Bargaining Agreements and cover different groups of participants.

There is also a Guaranteed Annual Income Fund which was established by the L/S Collective Bargaining Agreement. This covers Longshoremen only and LANDON WILLIAMS, Trustee, is the Employee Co-Chairman.

VIOLATION

The investigation established that the trustees caused the L/S Pension Plan to become indebted to the L/S Welfare Plan in the amount of $143,194.11. This was the result of transferring contributions allocated to the Welfare Plan to the Pension Plan, in violation of Act Section 404(a)(1)(D). In addition, the trustees of the L/S Pension Plan are also the trustees of the L/S Welfare Plan, however, these two plans have non-identical groups of participants. The transferring of Welfare assets to the Pension Plan could be adverse to the interest of the Welfare participants (and/or their beneficiaries). If so, this would be in violation of Act Section 406(b)(2).

### VIOLATION

The investigation established that the trustees of the L/S Pension Plan allowed the South Atlantic Guaranteed Annual Income Fund, the ILA Employees Royalty Fund, and Local Union 1408 to remit contributions based upon a lesser number of hours than their employees actually worked. As a result, the Pension Fund lost $77,752.18 in contributions and results in violations of Act Sections 404(a)(1)(D) and 406(a)(1)(B).

### VIOLATION

The investigation also established the Trustees, Plan Administrator and Attorney received advances to cover expenses of attending International Foundation Seminars. However, the Trustees failed to require proper accounting for these advances. During the period from 1-1-75 to 9-30-78, there were $32,639.43 in unsubstantiated Pension Fund travel expenses. The above action appears to be in violation of Act Section 404(a)(1)(A) and 406(a)(1)(B).

### VIOLATION

The investigation further revealed that the L/S Pension Plan was not properly bonded, in violation of Act Section 412(a) and is presently under-bonded because surety companies are unwilling to write coverage due to the adverse publicity generated by the indictment of several ILA officials.

### VIOLATION

The investigation revealed that joint expenses and joint residual income were not properly allocated among the ILA Funds. All expenses are currently paid from the L/S Welfare Fund. The Trustees allocated a portion of total contributions to cover joint expenses. However, this allocation was not sufficient to pay total joint expenses. As a result, the L/S Welfare Plan had to absorb the excess expenses. The trustees did not reallocate the excess joint expenses back to the other Plans. In addition, the bulk of joint income was deposited into the L/S Welfare account. However, the trustees did not allocate the earnings to the Plans on an equitable basis. As a result of the above actions, the Pension Plan's fund balance was overstated by $162,674.81 as of 9-30-78. The failure of the trustees to properly charge each Fund with its equitable portion of expenses and give each Fund credit for earnings on residual income appears to be in violation of Act Section 406(b)(2).

VIOLATION

The investigation revealed that the Pension Plan Trustees reimbursed educational expenses of the Fund's attorney, MR. CLARK TOOLE. MR. TOOLE was a party-in-interest as a result of his legal services to the Plan. Therefore, the payments of MR. TOOLE'S educational expenses appear to be a transfer of plan assets for the use of a party-in-interest. As a result of the above, total expenses of $10,410.20 were reimbursed to MR. TOOLE. The Pension Fund's share of these expenses was $4,914.72. Other than for specific work performed, MR. TOOLE did not provide any documentation justifying his billings. These actions appear to be in violation of Act Section 406(a)(1)(D). The Trustees' failure to insure reasonableness and require documentation could be in violation of Act Section 404(a)(1)(A).

VIOLATION

The investigation disclosed the Plan trustees were receiving compensation for attending trustees meetings. Both the Plan's Trust Agreement and Plan Documents prohibit the payment of compensation to the trustees for the performance of their duties. During the period 10-30-74 to 9-30-78, the trustees received $4,185.10 in compensation, of which $1,608.72 was attributable to the L/S Pension Plan. The payment of this compensation appears to be in violation of the Plan's Documents. If so, this would be in violation of Act Section 404(a)(1)(D).

VIOLATION

The investigation disclosed MR. LANDON WILLIAMS, Employee Trustee and Co-Chairman, allowed, for consideration, United Trailer Services, Inc. to contribute less than the proper amount of contributions to the ILA Pension Plan and other related Plans. The records of this firm are under the custody of the U. S. Department of Justice and thus were not available during this inquiry. The amount of the underpayments will be determined when these records are released to us which we expect in the near future. The above actions by MR. WILLIAMS appears to be in violation of Act Section 406(b)(3).

GENERAL COMMENTS

MR. LANDON WILLIAMS, the employee co-chairman participated in the hiring of his wife as Assistant Administrator for the GAI Fund in late 1972. In addition, he recently hired his son as a Royalty Inspector. During interviews with the various Fund employees, it was disclosed that all those interviewed consider MR. WILLIAMS their "Boss."

MR. MARION JOHNSON indicated that LANDON WILLIAMS, who is also President of LU 1408, had arranged the December 1978 Royalty Fund payout to coincide with his reelection bid.

Due to problems with the Royalty Fund investments, large sums of L/S Employees Benefit Funds' assets were transferred to the Royalty Fund to make the December 1978 payout. Although there were no apparent losses as a result of these actions, the ability to exercise such control over various Fund's assets does not appear to be in the best interest of plan participants. MR. WILLIAMS has been convicted of accepting payoffs for labor peace. Therefore, it appears that the employers within the Jacksonville area are reluctant to challenge MR. WILLIAMS' authority. As a result neither the employer trustees or employee trustees, other than LANDON WILLIAMS, are able to act effectively in the operation of the Jacksonville ILA Employee Benefit Plans.

As a point of information, during the investigation, MR. MARION JOHNSON,(Administrator since the early 60's) was fired. This action appears to have been justified. Although MR. JOHNSON appeared to be an honest individual who was trying to do a good job, he did not have the technical ability to manage the several ILA Funds. As a result, the Fund's records were in total disarray. MR. JOHNSON had co-mingled the assets of the various ILA Funds and had not kept records sufficient to easily unscramble his actions. At the onset of the investigation the records were scattered throughout the L/S Welfare Office, and remain so.

ADMINISTRATIVE COMMENTS

The Miami Area Office has not made any efforts to obtain voluntary compliance. The trustees have refused to be interviewed individually, therefore, their position cannot be reported. However, during the investigation, the Plan's Administrator, CPA, and attorney stressed that the trustees would be willing to follow the recommendations of the U. S. Department of Labor. However, it is doubtful that the trustees would voluntarily make restitution for assets that have been lost, as a result of previously described violations.

The trustees are covered by Fiduciary insurance. This policy is with Aetna Casualty and Surety Company in the amount of $1,000,000.

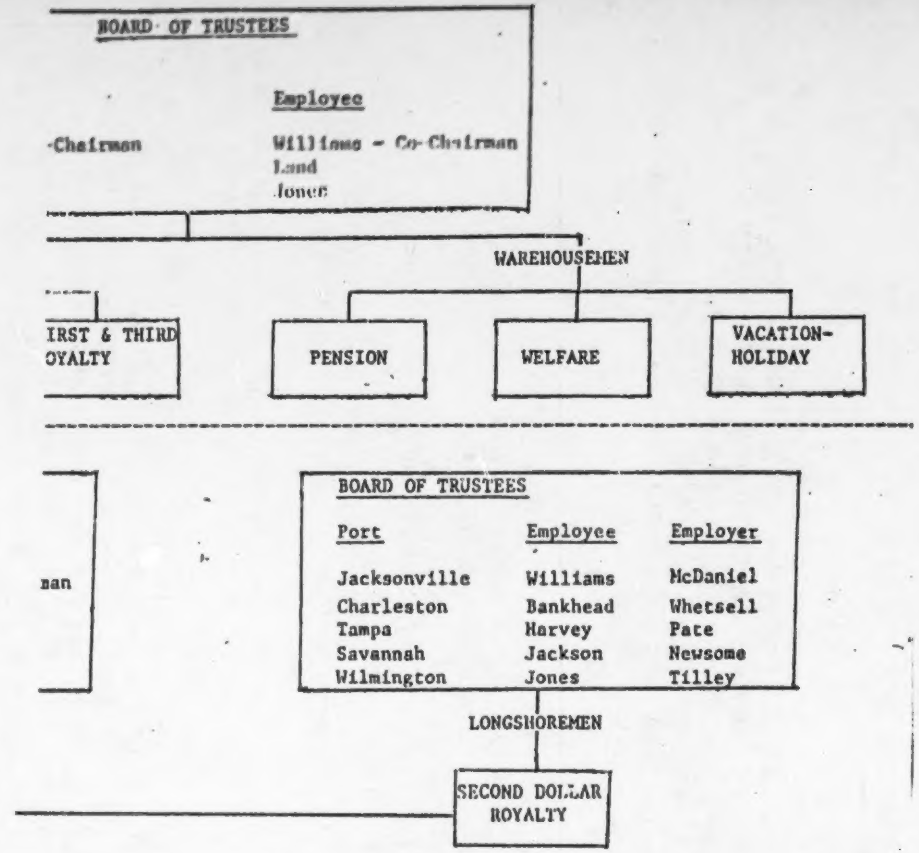
In view of the foregoing, it is recommended that legal action be taken against the Trustees for all losses to the Plan which have resulted from these violations of Act Sections 404 and 406.

Further, we strongly believe legal action should be promptly taken to remove MR. LANDON WILLIAMS from his position as trustee and co-chairman. In addition, action should be taken against the CPA Firms of MEEK and MCLEOD and RALPH HOCHMAN for their acts which appear to have contributed to the above described violations.

We recommend the Funds either have different Boards of Trustees (separate Board for each Fund) or renegotiate the Collective Bargaining Agreement to eliminate the need for the common trustees to allocate the lump-sum contributions. Moreover, we recommend the trustees be required to establish and maintain separate recordkeeping systems for each of the Funds involved and all assets be redistributed to the correct Fund and the trustees be required to maintain and account for these assets within the framework of that entity.

Finally, the CPA firm of RALPH HOCHMAN erroneously consolidated the Financial Statements of the L/S Pension Plan with the other previously mentioned related Plans. These Financial Statements should be declared deficient and rejected. The Department of Labor should require the submission of more appropriate, separate Financial Statements.

It should be noted that case numbers 42-4606, 42-4607, 42-4608, 42-4609, 42-4610, 42-4735 and 42-4759 are related, and were investigated concurrently with this case. Thus, separate ROI's will follow promptly with a similar litigation recommendation.


BOARD OF TRUSTEES
Employee
-Chairman
Williams - Co-Chairman
Land
Jones
WAREHOUSEMEN
IRST & THIRD
OYALTY
PENSION
WELFARE
VACATION-
HOLIDAY
nan
LONGSHOREMEN
SECOND DOLLAR
ROYALTY

BOARD OF TRUSTEES

| Port | Employee | Employer |
|---|---|---|
| Jacksonville | Williams | McDaniel |
| Charleston | Bankhead | Whetsell |
| Tampa | Harvey | Pate |
| Savannah | Jackson | Newsome |
| Wilmington | Jones | Tilley |

Above

Note

All Second Dollar Royalty Collections
are sent directly to GAI Fund Per

The CHAIRMAN. Now, how much money was involved in this payout?

Mr. DAY. Over $1 million.

The CHAIRMAN. This would have been paid anyway, wouldn't it?

Mr. DAY. I think you are referring to the transfer of funds to the royalty fund from various other funds so that they could pay out the money. Yes, the money would have been paid out anyway.

The CHAIRMAN. Therefore, what I am saying is, this money would have been paid out anyway but it was moved up by Williams a few weeks to benefit his reelection bid. Is that correct?

Mr. DAY. I cannot recall exactly how far it was moved up. I do know that it was manipulated so that it would coincide with or be close to the election date.

The CHAIRMAN. That is what you told Mr. Phillips of my staff in a telephone conversation on May 21.

Mr. DAY. Yes, sir.

The CHAIRMAN. They actually moved this up to coincide with the election process.

Mr. DAY. That was our understanding from the administrator.

The CHAIRMAN. OK. The Crouch letter goes on to say that "Although there were no apparent losses as a result of these actions, the ability to exercise such control over various funds' assets does not appear to be in the best interests of plan participants. Mr. Williams has been convicted of accepting payoffs for labor peace. Therefore, it appears that the employers within the Jacksonville area are reluctant to challenge Mr. Williams' authority. As a result, neither the employer trustees or employee trustees other than Landon Williams are able to act affectively in the operation of the Jacksonville ILA employee benefit plans." Now this would seem to indicate that Mr. Williams runs these funds with an iron hand, wouldn't it?

Mr. DAY. Yes, sir.

The CHAIRMAN. That is not quite the way, really, it should be done, is it?

Mr. DAY. No, sir.

The CHAIRMAN. Now, Mr. Day, in a moment I will be coming back to your report of investigation of October 24, 1979, on the longshore pension plan but first I want to turn to your report of investigation of November 28, 1979, on the South Atlantic ILA guaranteed annual income fund, sometimes referred to as the GAI plan. Would you briefly describe the purposes of that fund, Mr. Day?

Mr. DAY. That fund provides an unemployment benefit, the unemployment benefit being some guaranteed 1,250 hours should an individual fail to attain that number of hours during the year that he is working.

The CHAIRMAN. All right. Without objection, we will enter that report of investigation on the GAI fund into the record as Day Document No. 6.

[Day Document No. 6 follows:]

Day Document #6

**U.S. DEPARTMENT OF LABOR**
**Office of Labor-Management**
**and Welfare-Pension Reports**

## REPORT OF INVESTIGATION

FILE NO.: 42-4735

ECT:
South Atlantic ILA GAI Fund
1336 Haines Street
Jacksonville, FL 32206

EIN: 59-6495211-501

PROGRAM: 48-Fiduciary

VIOLATION(S):

DATE: 11/28/79

BY: William Chapman and Jesse Day

AT: Miami AO

STATUS: Action

SYNOPSIS:

Predication

An indictment of ILA Officials dated July 7, 1978 contained allegations that trustees of ILA Employee Benefit Plans permitted, for consideration, contributing employers to file false reports understating hours worked, resulting in monetary losses to the plan.

Issues and Findings

Employee Co-Chairman and trustee, LANDON WILLIAMS, participated in the appointment of his spouse, ROSALIND WILLIAMS to the position of Assistant Administrator in apparent violation of Act Section 406(b)(1).

The Plan's trustees have allowed the Fund to underpay contributions due to the Jacksonville ILA Employee Benefits Plans in apparent violation of Act Sections 404(a)(1)(B) and 404(a)(1)(D).

The trustees have failed to take effective measures to reduce and collect benefit overpayments in apparent violation of Act Section 404(a)(1)(A).

The trustees have failed to secure adequate bonding as required by Act Section 412(a).

The trustees have failed to require proper accounting for advances for meeting expenses in apparent violation of Act Section 404(a)(1)(A) & (B) and 406(a)(1)(B).

The trustees have failed to insure that administrative expenses were reasonable and necessary, in apparent violation of Act Section 404(a)(1)(A) & (B).

The trustees have allowed the plan to pay travel allowances without requiring proper accounting for these payments, in apparent violation of Act Section 404(a)(1)(A) & (B) and Act Section 406(a)(1)(B) & (D).

The trustees have allowed the plan to reimburse out of town mileage expenses at a rate in excess of that authorized by the Board of Trustees in apparent violation of Act Section 404(a)(1)(A) & (B) and 404(a)(1)(D).

DISTRIBUTION:
2 NATIONAL OFFICE /PWBP w/1 set of Exhs.
1 REGION ATL
1 AO FILE MIA w/1 set of Exhs.

APPROVAL: AREA ~~XXXXXXXX~~ Administrator
Carl E. Crouch

APPROVAL: REGIONAL DIRECTOR

*This document is the property of the Office of Labor-Management and Welfare-Pension Reports. Its contents are not to be disclosed to unauthorized persons.*

LMSA 200 (9/65)
GPO 887-781

## Other Findings

The investigation revealed that plan assets had been sold to the Plan's CPA, a party in interest.

The investigation revealed that, although the GAI Fund is a participating employer, there were no written agreements setting forth the basis of this participation.

The investigation revealed that the Plan's attorney is the son of the ILA President. However, no direct party in interest relationship could be shown.

The investigation revealed that the trustees were escrowing FICA taxes awaiting an IRS ruling. An unfavorable ruling could result in penalties against the Plan.

The investigation revealed that the trustees had placed scope limitations on the FYE 9/30/78 CPA audit.

The investigation revealed that the CPA was withholding the release of his FYE 9/30/78 audit report, because the Co-Chairman LANDON WILLIAMS would not sign the management representation letter.

## IRS Checksheet

The IRS checksheet was sent to the IRS on July 10, 1979.

## I. PREDICATION:

On June 7, 1978, twenty two (22) officers of the INTERNATIONAL LONGSHOREMEN'S ASSOCIATION and officials of shipping and service companies were indicted by the Federal Grand Jury of the Southern District of Florida. Included in the indictment were allegations that the trustees of ILA PENSION and WELFARE PLANS permitted, for consideration, contributing employers to file false reports, understating hours worked, resulting in monetary losses to the plans. This case was opened to determine the amount, if any, of plan losses, and pursue, if necessary, restitution to the plan (Exh. 1).

## II. POTENTIAL JURISDICTION PROBLEMS:

None

## III. BACKGROUND:

The South Atlantic ILA GAI Fund, (a guaranteed annual income fund, hereafter the GAI Fund), was established in 1972 for the purpose of providing a guaranteed annual wage to eligible employees. (Exh. 2, p. 1). The contributing employers are all those companies on whose behalf the South Atlantic Employers Negotiating Committee has negotiated the Longshoremens' and Clerks and Checkers collective bargaining agreements with the INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, and all those companies which directly or indirectly utilize the services of any employees covered by said collective bargaining agreements which subscribe to and agree to be bound by the terms of said collective bargaining agreement. (Exh. 2 p. 1).

Participants are eligible employees who are employed in the Ports of Morehead City, Wilmington, Southport, Georgetown, Charleston, Port Royal, Savannah, Brunswick, St. Marys, Fernandina, Jacksonville, Tampa and Port Manatee (Exh. 2, p. 2). 324 participants were eligible during the collective bargaining period October 1, 1977 through September 30, 1980. To be eligible during this period the employee had to be employed or credited for 700 or more hours under the collective bargaining agreement in the contract year 1975-76 (Exh. 2 p. 4).

The Trust Agreement states that the fund shall be administered by a Board of Trustees composed of (5) representatives of the employers and (5) representatives of the union, one from each of the following ports from each side:

Wilmington, Savannah, Charleston, Jacksonville and Tampa (Exh. 2, p. 8).

Contributions to the Guranteed Annual Income Plan are composed entirely of employer contributions. The participants are not required to contribute to the fund. The contributions to the fund stem from two sources. One is a tonnage assessment which the trustees establish on their best estimate of the amount required for the year as related to the anticipated volume of cargo to be handled in the ports. The assessment will be identical in amount at each port (Exh. 3, p. 7). The second source of contributions into the GAI Fund is the 2nd Dollar Royalty Fund contributions. MR. DOUGLAS BALL, Administrator, stated in a report of interview that the 2nd Dollar Royalty Fund contributions received by the GAI Fund are currently approximately $1,500,000 per year and that these contributions are the source of GAI benefits (Exh. 4, p. 6). The collective bargaining agreement provides for a 2nd Dollar Royalty Assessment (Exh. 3 p. 5). The 1978 final year collections for tonnage assessments were $980,117.00 and 2nd Dollar Royalty collections were $2,166,992 per the financial statements of the fund (Exh. 5,1978 p. 14).

The GAI Fund provides eligible participants with a benefit which will insure that the participant receives 1250 times his applicable wage rate (Exh. 6, p.6, Exh. 3, p. 7). The benefits are paid to participants who are employed 700 hours or have 700 or more hours credited to them during the qualifying year set by the Board of Trustees (Exh. 2, p. 4). The qualifying year for collectively bargained contract years 77-78, 78-79 and 79-80 is fiscal year beginning October 1, 1975 and ending September 30, 1976 (Exh. 6, p. 6, Exh. 3, p. 4).

The GAI Fund also contributes to the Welfare, Vacation and Pension funds of the unemployed participants (Exh. 3, p. 7). When a man 65 or older becomes eligible for a pension he must decide within 6 months to either retire and receive a lump-sum settlement from the GAI Fund of $1,250.00 or to continue working with no further GAI coverage (Exh. 3, p. 7).

The GAI Fund provides for a system of debits whereby participants are penalized for certain actions, such as not showing up for work. Participants can lose all status and right to a guaranteed annual income under this system (Exh. 3, p. 9).

Financial statements issued for period ended 9/30/78 (Not finalized and issued for discussion purposes only) list total assets of $8,496,034.39. Approximately two million of this amount is from accumulation of tonnage assessments and approximately six million is from 2nd Dollar Royalty Fund accumulations (Exh. 5, p. 12).

## IV. PLAN ADMINISTRATION AND FINANCIAL OPERATION:

### A. Trustees and Service Providers

This unemployment benefit fund is administered by a Board of Trustees composed of five (5) representatives of the employers and five (5) representatives of the unions, one from each of the following ports from each side; Wilmington, Savannah, Charleston, Jacksonville and Tampa.

The GAI Fund trustees for each port are currently as follows: (Exhs. 2, p. 8, Exh. 4, p. 1 & 2, Exh. 8)

**Jacksonville**

1. Landon Williams    Co-Chairman    Union
   Service - inception (1972) to present

2. James Wells Co-Chairman Employer
Service - replaced Harold McCarthy in 1979

Tampa

1. Perry Harvey, Jr. Union
Service - inception (1972) to present

2. Richard Leever Employer
Service - replaced Ed Sheffield in 1979

Savannah

1. Elizah Jackson Union
Service - replaced Joseph White in 1974

2. James Newsome Employer
Service - replaced Walter Caceres in 1978

Charleston, S.C.

1. Walter Bankhead Union
Service - inception (1972) to present

2. Rufus Whetsell Employer
Service - replaced Joe Piening in 1976

Wilmington, N. C.

1. Thodore Jones, Sr. Union
Service - replaced John Newton in 1976

2. Peter Ruffin, Jr. Employer
Service - inception (1972) to present

The GAI Fund service providers are as follows:

Attorneys

The Law firm of Thomas W. Gleason, 17 Battery Place, Suite 600, New York, New York 10004, with individual attorneys Thomas W. Gleason and Peter Kaiser specifically servicing the GAI Fund. Mr. Gleason has served as legal counsel from the inception of the GAI Fund (Exh. 4, p. 2).

CPA

Mr. Ralph Hochman, CPA, of 6820 Old St. Augustine Rd., Jacksonville, Florida 32217 has provided the audited financial statements for the GAI Fund since the inception of the fund (Exh. 4, p. 2).

## Other Service Providers

The New York Shipping Association, Inc. Data Services provides computer service to the GAI Fund. NYSA, Inc. Data Services is located at 80 Broad Street, New York, N. Y. 10004. NYSA, Inc. Data Services has provided computer service to the GAI Fund from inception of the fund.

## B. Financial Operation

The Collective Bargaining Agreement states that to finance the GAI Fund the parties ordering the contracting stevedore to work cargo vessels shall contribute, commencing 6/1/72, to the GAI Fund, a tonnage assessment which the trustees establish on their best estimate of the amount required for the year as related to the anticipated volume of cargo to be handled in these ports. This assessment will be identical in amount at each port (Exh. 3, p. 7). At the inception of the GAI Fund in 1972 the tonnage assessments were as follows: (Exh. 9, 8/28/72, p. 2).

A. 10¢ per 2240 lbs. on all cargo other than bulk.
B. 01¢ per 2240 lbs. on bulk cargo
C. 10¢ per vehicle if under 2240 lbs.
D. 15¢ per vehicle if 2240 lbs. or over.

Effective October 1, 1972 the assessment rates were amended as follows: (Exh. 9, 9/30/72, p. 1).

| | |
|---|---|
| General Cargo | 10¢ per 2240 lbs. |
| Bulk Cargo | 01¢ per 2240 lbs. |
| Automobiles (under 4,000 lbs.) | 15¢ per unit |
| Automobiles (over 4,000 lbs.) | charged at general cargo rates. |

The amendment effective October 1, 1972 is in effect at present.

Another substantial source of revenue for the GAI Fund is the 2nd Dollar Royalty assessment as provided for in the Collective Bargaining Agreement. (Exh. 3, p. 5). The Collective Bargaining Agreement states that a District Fund is to be administered by the negotiating committee as trustees, and disposition of the money to fringe benefit funds is to be directed by a majority vote of the negotiating committee. (Exh. 3, p. 5). The negotiating committee decided that the 2nd Dollar Royalty would be used with the GAI as explained by the GAI Fund attorney Thomas Gleason (Exh. 19, 1/13/77, p. 4, Exh. 10).

The current Collective Bargaining Agreement provides for the following contribution by the employers when participants are loading or discharging containers which are twenty (20) feet or more in length and which have not been stuffed or will not be stripped by personnel employed under the CBA.

A. 35¢ per gross ton, on conventional ships
B. 70¢ per gross ton, on partially automoted ships
C. $1.00 per gross ton, on ships where more than two hatches have been converted or fitted for the handling of containers, or where more than forty per cent of the ships' bale cube has been fitted for containers (Exh. 3).

The GAI Fund is administered from Jacksonville, Florida. The Administrator is MR. DOUGLAS BALL, and the Assistant Administrator is MRS. ROSALIND P. WILLIAMS, whose husband is LANDON L. WILLIAMS, SR., President of ILA-Local 1408 and employee Co-Chairman of the South Atlantic ILA/GAI Fund (Exh. 11). The GAI Fund has employee dispatchers in each port whose responsibility it is to badge men in and out from work. This is a system to insure proper eligibility and also to encourage the men to appear for work so that they don't jeapordize their chances of receiving GAI benefits (Exh. 6, p. 5).

## V. BONDING AND REPORTING AND DISCLOSURE:

The GAI Fund is currently bonded by Liberty Mutual Insurance Company for the period 12/19/78 through 12/19/81. The bond coverage extends to cover five individuals. The coverage on each individual is $100,000 (Exh. 12, Bond). The proper amount that these five individuals should be individually bonded for is $500,000 (Exh. 12, computation). In addition, six trustees that are not now bonded should be bonded and the alternate trustees should also be bonded.

The GAI Fund is current in filing required reporting forms and the latest 5500 available was for the period ended 9/30/78. The latest EBS-1 is dated June 23, 1978. Summary Annual reports for 1977 and 1978 were inspected. A corrected copy of the Summary Plan Description dated 5/5/79 was reviewed. The GAI Fund appears to be in compliance with the reporting and disclosure requirements of ERISA.

## VI. REQUEST FOR VARIANCES AND EXEMPTIONS:

There has not been any requests for variances or exemptions by this unemployment fund (Exh. 38).

## VII. ISSUES AND FINDINGS:

A. There is an apparent failure to comply with Section 406(b)(1) of the ERISA in that, MR. LANDON L. WILLIAMS, a fiduciary of the GAI Fund, participated in the appointment of his spouse, ROSALIND P. WILLIAMS to the position of Assistant Administrator of the GAI Fund.

### 1. Description of Violation

On November 8, 1972, the Board of Trustees of the GAI Fund, during a trustee meeting decided that the two Co-Chairman would hire a full time Assistant Administrator (Exh. 9, 11/8/72 p. 3). LANDON L.

WILLIAMS was appointed employee Co-Chairman on 7/1/72 by the Board of Trustees (Exh. 8, p. 2). CARL OPPER was appointed employer Co-Chairman and served from 7/1/72 until his demise on 5/6/77. The minutes of the Board of Trustees for December 13, 1972, the minutes next succeeding the November 8, 1972 minutes, record MS. ROSALIND P. WILLIAMS as the Assistant Administrator. (Exh. 9, 12/18/72 minutes). LANDON L. WILLIAMS has continued in his capacity as employee Co-Chairman and is currently the employee Co-Chairman (Exh. 8, p. 2 and Exh. 9, 1/18/79). MRS. WILLIAMS has continued, since being appointed in 1972, as Assistant Administrator of the GAI Fund and is currently so serving (Exh. 9, 12/13/72, 1/18/79). LANDON L. WILLIAMS has on occassion participated in Board of Trustee action regarding pay increases or Christmas Bonuses for the Assistant Administrator, his spouse (Exh. 9, 5/2/75; 10/27/77 p. 2; 1/13/78).

The prohibitions of Section 406(b) supplement the other prohibitions of Section 406(a) of the Act by imposing on parties in interest, who are fiduciaries, a duty of undivided loyalty to the plans for which they act. These prohibitions are imposed upon fiduciaries to deter them from exercising the authority, control or responsibility which makes such persons fiduciaries when they have interests which may conflict with the interests of the plans for which they act. In such cases, the fiduciaries have interests in the transactions which may affect the exercise of their best judgement as fiduciaries. A person in which a fiduciary has an interest which may affect the exercise of such fiduciary's best judgement as a fiduciary includes, a person described in Section 3(14) of ERISA. MRS. ROSALIND P. WILLIAMS is a party in interest because she is the spouse of LANDON L. WILLIAMS, who is a fiduciary.

The Regulations under 2550.408(b)(2)(e)(2) provide that a fiduciary does not engage in an act described in Section 406(b)(1) of the Act if the fiduciary does not use any of the authority, control or responsibility which makes such person a fiduciary to cause a plan to pay a fee for service furnished by a person in which such fiduciary has an interest which may affect the exercise of such fiduciary's best judgement as a fiduciary. The exemption provided by Section 408(b)(2) appears to be unavailable in this situation because MR. LANDON L. WILLIAMS participated in the appointment of his spouse, ROSALIND P. WILLIAMS to the position of Assistant Administrator and also participated in Christmas Bonuses and pay increases she received.

It therefore, appears that Act Section 406(b)(1) has been violated.

2. Loss to the Plan

Investigation to determine reasonableness of the salary paid the Assistant Administrator has not been performed. Assuming that the salary paid was reasonable and would have been paid to an Assistant Administrator in any event, then there appears to be no loss to the plan. This is not to say there is no apparent prohibited transaction.

3. Violators as Fiduciaries

The following were Trustees during the period in which the above apparent violations occurred and were Fiduciaries within the meaning of Act Section 3(21). (See Section IVA of this report.) (EXH 8, p. 1)

EMPLOYER

Harold McCarthy
  replaced by James Wells
  on 2-1-79
Ed Sheffield
  replaced by Richard Leever
  on 1-26-79
Walter Caceres
  replaced by James Newsome Jr.
  on 5-17-78
Peter Ruffin, Jr.
Rufus K. Whetsell

EMPLOYEE

Landon L. Williams
Perry Harvey, Jr.
Elijah Jackson
Theodore Jones
Walter Bankhead

4. Timeliness of Violation

The investigation indicates that these violations occurred on or after the effective date of the Fiduciary Standards of ERISA and were not subject to the limitations of actions as prescribed by Act Section 413.

5. Position of Fiduciaries

The Trustees of the South Atlantic ILA GAI Fund have refused to meet with representatives of the DOL, individually. Since the DOL Policy is to meet with the Board Members individually and not as a group, no trustee closing interviews were conducted. Therefore, the Trustees' position, with regards to these potential violations, could not be obtained (EXH 16).

B. The Trustees have allowed the South Atlantic ILA Guaranteed Annual Income Fund (GAI Fund), to contribute to the Jacksonville ILA Pension, Welfare and Vacation-Holiday Fund on less than actual hours worked by the GAI Fund employees.

The above appears to be an extension of credit to the GAI Fund by the Jacksonville ILA Pension, Welfare and Vacation-Holiday Funds in violation of Act Section 404(a)(1)(B) and 404(a)(1)(D).

1. Description of Violation

In accordance with the Collective Bargaining Agreement, the participating employers of the ILA Employee Benefit Plans were to remit contributions to the ILA Pension, Welfare and Vacation-Holiday Funds, for all hours for which the men receive pay (EXH 3, p. 4).

During the investigation, it was established that contributions from the GAI Fund were based on 700 hours instead of the actual number of hours the employees of the GAI Fund worked (EXH 4, p. 5, EXH 13).

MR. BALL, Administrator for the GAI Fund, stated that the GAI Fund office employees work 35 hours per week and GAI Fund dispatchers work 40 hours per week (EXH 4, p. 5).

MR. BLYDEN GEIGER, Dispatcher for the GAI Fund, stated in a report of interview that he did not understand why he was given credit for only 700 hours, because he actually worked 2050 during the year (EXH 14, p. 1).

As a result of the above the GAI Fund has received the following extensions of credit from the Jacksonville Longshore ILA Pension, Welfare and Vacation-Holiday Funds (EXH 15).

| FYE | TOTAL CONTRIB. RATE | GAI ACTUAL HOURS | GAI HOURS REPORTED | GAI DEFICIENT HOURS | TOTAL ADDITIONAL CONTRIB. DUE |
|---|---|---|---|---|---|
| 9-30-75 | $2.635 | 14,200 | 6,300 | 7,900 | $20,911.36 |
| 9-30-76 | 2.905 | 14,941 | 6,067 | 8,874 | *25,778.97 |
| 9-30-77 | 3.205 | 13,819 | 5,225.5 | 8,642.5 | 27,731.26 |
| 9-30-78 | 3.515 | 13,980 | 5,600 | 8,380 | 29,455.70 |
| | | | TOTAL EXTENSION OF CREDIT | | $103,877.29 |

*Includes over-payment on behalf of D. Spicer, which is not refundable, of $189.10

The failure of the Trustees to ensure that contributions were being paid in accordance with the Collective Bargaining Agreement appears to be in violation of Act Section 404(a)(1)(D) in that contributions are required on all hours worked (EXH 3, p. 4).

The failure of the Trustees to ensure that contributions were being paid in accordance with the Collective Bargaining Agreement appears to be imprudent. If so, this would be in violation of Act Section 404(a)(1)(B).

2. Loss to the Plan

The GAI Fund has not incurred a loss but has failed to remit to the Jacksonville ILA Longshore Pension, Welfare and Vacation/Holiday Funds on the actual hours its employees worked.

3. Violators as Fiduciaries

(Refer to Section VIIA 3 and IVA of this report)

4. Timeliness of Violations

The investigation indicates that these violations occurred on or after the effective date of the Fiduciary Standards of ERISA and were not subject to the limitations as prescribed by Act Section 413.

5. The Trustees of the South Atlantic ILA GAI Fund have refused to meet with representatives of the DOL, individually. Since the DOL Policy is to meet with the Board Members individually and not as a group, no trustee closing interviews were conducted. Therefore, the Trustees' position, with regards to these potential violations, could not be obtained (EXH 16).

C. The Trustees of the GAI Fund have apparently failed to take effective measures to reduce benefit overpayments and to follow up on overpayments to minimize the risks of losses to the fund. If so this would be a violation of Act Sections 404(a)(1)(A) and (B).

1. Description of Violations

The GAI Fund Trust Document states that all GAI eligible employees shall be entitled, for each year for which he is so eligible, to receive GAI payments equivalent to 1250 hours multiplied by the applicable basic straight time hourly rate of pay (EXH 2, p. 6). Gross earnings during the guarantee period are deducted from GAI payments. GAI payments are also reduced as a result of debits incurred in an amount equivalent to the number of hours debited (EXH 2, p. 7).

The Trust Agreement provides for a "Reserve" of up to 125 hours, at 25 hours per month, of GAI payments. The "Reserve" is to minimize GAI overpayments. If there is a surplus of GAI hours withheld, payment of said hours shall be made at the end of each contract year (EXH 2, p. 8).

The Collective Bargaining Agreement provides that overpayments to employees may be deducted, as necessary, from the employee's future salary (EXH 3, p. 8).

In a meeting of the Board of Trustees of the GAI Fund on December 12, 1974 the term "salary" as used in the Collective Bargaining Agreement was interpreted to mean any future GAI payments (EXH 9, 12-4-74, p. 4). The Trustees further resolved that they could only take action to recover overpayments once the man re-enters the system and then they could deduct any overpayment of funds out of any future GAI payments (EXH 9, 12-4-74, p. 4).

The Trustees resolved that the $1,250.50 lump sum settlement provided to those retiring at age 65 cannot be used to reduce overpayments that may have been made to the individual in prior years (EXH 9, 12-4-74, p. 4, EXH 3, p. 7).

There are some individuals who have retired and received their $1,250.00 lump sum settlement, who have overpayments outstanding and due the GAI Fund (EXH 17, p. 1).

The total of cumulative overpayments still outstanding on September 30, 1978 was $95,470.37. This balance is composed of overpayments in each of the ports as follows: (EXH 17, Summary page).

| PORT | PORT # | AMOUNT OVERPAID AT 9-30-78 |
|---|---|---|
| Wilmington, N.C. | 10 | $23,538.34 |
| Morehead City, N.C. | 13 | 11,773.85 |
| Southport, N.C. | 17 | 11,496.41 |
| Charleston, S.C. | 20 | 9,377.08 |
| Georgetown, S.C. | 23 | 4,754.09 |
| Savannah, Ga. | 30 | 7,843.20 |
| Brunswick, Ga. | 33 | 4,360.51 |
| Jacksonville, Fl. | 40 | 14,334.72 |
| Tampa, Fl. | 50 | 7,992.17 |
|  | TOTAL OVERPAID AT 9-30-78 | $95,470.37* ** |

*Includes some post 9-30-78 adjustments made retroactive to 9-30-78

**Agrees with CPA Financial Statements 9-30-78 (EXH 5, 9-30-78, p. 3, 12 and 20). The failure of the Trustees to pursue overpayments and adopt measures that would result in the timely liquidation of overpayments appear to be in violation of Act Sections 404(a)(1)(A) and (B).

2. Loss to the Plan

The overpayments are cumulative and represent overpayments in past plan years. In fiscal year ended 9-30-74 the balance was $9,056.43 and $53,888.92 was added in FYE 9-30-75. During FYE 9-30-76 the overpayments amounted to $30,124.98 which brought the balance to $93,070.33. Since FYE 9-30-76 the balance has remained at approximately $95,000.00. For those that retired with outstanding overpayment balances, it appears that the Fund will bear the loss.

3. Violators as Fiduciaries

(Refer to Section VIIA 3 and IVA of this report)

4. Timeliness of Violations

The investigation indicates that these violations occurred on or after the effective date of the Fiduciary Standards of ERISA, and were not subject to the limitations of actions prescribed by Act Section 413.

5. Position of Fiduciaries

The Trustees of the South Atlantic ILA GAI Fund have refused to meet with representatives of the DOL, individually. Since the DOL Policy is to meet with the Board Members individually and not as a group, no trustee closing interviews were conducted. Therefore, the Trustees' position, with regards to these potential violations, could not be obtained (EXH 16).

D. It appears that the Trustees have failed to secure adequate bonding as required by Act Section 412(a) of the ERISA.

1. Description of Violation

In accordance with Act Section 412 of the ERISA this Guaranteed Annual Income Fund is required to have a minimum bond of $10,000 to a maximum of $500,000, based on funds handled. A bonding computation performed during this investigation indicates a requirement that this fund be bonded in the amount of $500,000 for the fiscal year beginning 10-1-78 (EXH 12, p. 1). The named insured is the South Atlantic ILA/GAI Fund (EXH 12, p. 2). The bond is currently in effect for the period 12-19-78 through 12-19-81 (EXH 12, p. 2). The policy was issued by the Liberty Mutual Insurance Company which is an approved surety company per the Department of Treasury's annual surety company listing published in the July 1, 1977 Federal Register.

This bond appears insufficient in that it does not cover all the Trustees. Currently the bond covers the Administrator, Assistant Administrator, Accountant and both co-chairmen (EXH 12, p. 4 and 3). It appears that the bond should also cover the remaining eight Trustees. The bond also has limited liability for losses. The liability is limited to the amount of $100,000 per named individual. ERISA Act Section 412(a) requires a minimum of 10 per centum of the amount of funds handled, limited to $500,000. The bonding computation performed indicates total funds handled of $10,211,845., which would require a bond of $1,021,184, however, the bond could be limited to $500,000, since ERISA only requires plans to be bonded up to a maximum of $500,000 per Plan.

2. Violators as Fiduciaries

The following were Trustees during the period in which the above apparent violations occurred and were Fiduciaries within the meaning of Act Section 3(21) (See Section IVA of this report). (EXH 8, p. 1).

EMPLOYER

Harold McCarthy
  replaced by James Wells
  on 2-1-79
Ed Sheffield
  replaced by Richard Leever
  on 1-26-79
Walter Caceres
  replaced by James Newsome Jr.
  on 5-17-78
Peter Ruffin, Jr.
Rufus K. Whetsell

EMPLOYEE

Landon L. Williams
Perry Harvey, Jr.
Elijah Jackson
Theodore Jones
Walter Bankhead

3. Timeliness of Violations

The investigation indicates that this violation occurred on or after the effective date of the Fiduciary Standards of ERISA and were not subject to the limitations of actions as prescribed by Act Section 413.

4. Position of Fiduciaries

The Trustees of the South Atlantic ILA GAI Fund have refused to meet with representatives of the DOL, individually. Since the DOL Policy is to meet with the Board Members individually and not as a group, no Trustee closing interviews were conducted. Therefore, the Trustees' position, with regards to these potential violations, could not be obtained (EXH 16).

E. The Plan Trustees failed to require proper accounting for advances, to themselves for meeting expenses. The failure to properly account for advances to parties-in-interest could result in a violation of Act Section 406(a)(1)(B). Further, the Trustees have failed to insure that the Trustee meeting expenses were for the exclusive purpose of providing benefits to plan participants. If so this would be a violation of Act Section 404(a)(1)(A) and (B).

1. Description of Violations

The Trustees, during the period January 1, 1975 through June 8, 1979, received advances from the GAI Fund, to reimburse them for Trustee meeting expenses. The advances totaled $39,910.98 during this period (EXH 18, Summary page). Of this $39,910.98, the Trustees have failed to properly account for $22,262.79 of these expenses, in that, there was a failure to provide documentation for these expenses. An additional $9,120.21 of the $39,910.98 appears improper since it was for expenses of Alternate Trustees attending meetings when all the regular Trustees were present. An additional $270.44 in Trustee meeting expenses was also disallowed due to insufficient documentation or for being an improper expenditure.

RECAPICULATION OF ABOVE TRUSTEE MEETING EXPENSES

| | |
|---|---|
| Total Trustee Meeting Expense 5-2-75 through 6-8-79 (EXH 18, Summary) | $39,910.98 |
| Trustee Meeting Expense Amount for which there is insufficient, or no documentation | (22,262.79) |
| Alternate Trustee Meeting Expense for meetings in which the Regular Trustees attended | ( 9,120.21) |
| Other Trustee Meeting Expense for which there is insufficient or no documentation | ( 270.44) |
| Trustee Meeting Expense Amount for which there appears to be sufficient substantiation | $8,257.54 |

Advances to parties-in-interest are prohibited by Act Section 406(a)(1)(B) unless exempted by Act Section 408(c)(2). Interpretive Bulletin 75-6 states that an advance to a fiduciary or party-in-interest to cover expenses to be properly and actually incurred are not prohibited by Act Section 406 if the parties account to the plan at the end of the period covered by the advance. The failure of the Trustees/parties-in-interest to properly account to the plan appears to make 408(c)(2) inapplicable and therefore results in a 406(a)(1)(B) violation. The Plan's current Trust Agreement provides that the Trustees shall be reimbursed for all expenses properly and actually incurred in the performance of their duties (EXH 2, 77-80, p. 11). This Trust Agreement is effective for fiscal years 10-1-77 - 9-30-78, 79 and 80 (EXH 2, 77-80, p. 1). A prior Trust Agreement effective for fiscal years 10-1-74 - 9-30-75, 76 and 77 provides that "Trustees may receive reasonable compensation for necessary services rendered by them in connection with their official duties as such, and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of such duties. Section 414(c)(4) of the Act would not apply in this situation since this Section deals with the receipt of compensation and the Trustees are receiving an expense advance.

Under Section 2509.75-6 of the DOL Regulations, an expense advance to a party-in-interest to cover expenses to be incurred by such person in the performance of his duties with respect to the plan is allowed if the amount of the advance is reasonable and the party-in-interest accounts to the plan at the end of the period covered by the advance for the expenses actually incurred.

The failure of the Trustees to require that all expenses incurred were for the exclusive purpose of defraying reasonable expenses of administering the Plan appears to be in violation of Act Section 404(a)(1)(A) and (B). In addition, advances to parties-in-interest are prohibited by Act Section 406(a)(1)(B) unless exempted by Act Section 408(c)(2). Interpretive Bulletin 75-6 states that an advance to a fiduciary or other party-in-interest to cover expenses to be properly and actually incurred are not prohibited by Section 406 if the parties account to the plan at the end of the period covered by the advance. The failure of the Trustees and parties-in-interest to properly account to the Plan appears to make 408(c)(2) inapplicable and therefore results in a 406(a)(1)(B) violation.

2. Loss to the Plan

The loss to the Plan of $31,653.44 is composed of $22,262.79 in Trustee meeting expenses for which there is insufficient, or no documentation; $9,120.21 of advances to alternate Trustees for attendance at Trustee meetings where all the Regular Trustees were in attendance; $270.44 of Other Trustee meeting expense for which there is insufficient or no documentation.

| | |
|---|---:|
| | $22,262.79 |
| | 9,120.21 |
| | 270.44 |
| TOTAL LOAN TO THE PLAN | $31,653.44 |

3. Violators as Fiduciaries

The following were Trustees during the period in which the above apparent violations occurred and were Fiduciaries within the meaning of Act Section 3(21). (See Section IVA of this report). (EXH 8, p. 1)

EMPLOYER

Harold McCarthy
  replaced by James Wells
  on 2-1-79
Ed Sheffield
  replaced by Richard Leever
  on 1-26-79
Walter Caceres
  replaced by James Newsome Jr.
  on 5-17-78
Peter Ruffin, Jr.
Rufus M. Whetsell

EMPLOYEE

Landon L. Williams
Perry Harvey, Jr.
Elijah Jackson
Theodore Jones
Walter Barkhead

4. Timeliness of Violations

The investigation indicates that this violation occurred on or after the effective date of the Fiduciary Standards of ERISA and were not subject to the limitations of actions as prescribed by Act Section 413.

5. Position of Fiduciaries

The Trustees of the South Atlantic ILA GAI Fund have refused to meet with representatives of the DOL, individually. Since the DOL Policy is to meet with the Board Members individually and not as a group, no Trustee closing interviews were conducted. Therefore, the Trustees' position, with regards to these potential violations, could not be obtained (EXH 16).

F. The Trustees of the GAI have failed to insure that administrative expenses of the Plan are reasonable. This appears to be in violation of Act Section 404(a)(1)(A) and (B).

1. Description of Violation

As stated previously in this report, the GAI has two sources of funds. These sources are the Tonnage Assessments and the Second Dollar Royalty Assessments. During the period 10-1-74 to 9-30-78 the GAI received $12,435,479.87 in contributions and income from the above assessments and other income producing sources (EXH 21, Line 4).

Per the Collective Bargaining Agreement, the primary source of revenue for the GAI is the Tonnage Assessment (EXH 3, p. 6,7). The amount of this assessment was to be established by the GAI Trustee and was to be sufficient to cover the operation of the Fund (EXH 3, p. 6,7).

In addition to the Tonnage Assessment, the Fund gets the Second Dollar Royalty contributions. The Second Dollar Royalty Fund is trusteed by the Negotiating Committee. This Committee is made up of equal numbers of employee and employer representatives from each of the ports covered by the Collective Bargaining Agreement (EXH 3, p. 5). The CBA gives these Trustees the authority to direct the disposition of the Second Dollar Royalty contributions to the agreed upon Fund. However, the CBA directs that these contributions be used only for the payment of fringe benefits (EXH 3, p. 32). These 2nd Dollar Royalty Trustees have agreed to fund the GAI with the total 2nd Dollar Royalty contributions (EXH 10). However, these contributions could be used for supplementing other Plans (EXH 19).

Since the 2nd Dollar Royalty revenues are supplementary and could be lost to the GAI should the 2nd Dollar Royalty Trustees so decide, the expenses of the GAI are being analyzed using only the tonnage assessments. All Funds previously transferred and all interest on assets held by the GAI are considered to be assets of the GAI. Therefore, the income on those assets is being added to the Tonnage Assessments to determine the Funds available for payment of benefits and administration charges, within a given year.

A comparison of the GAI income (excluding Royalty) with expenses and benefits paid revealed that the Plan spent 164.14% of their FYE 9-30-75 revenues, 224.82% of their FYE 9-30-76 revenues, 137.08% of their FYE 9-30-77 and 119.98% of their FYE 9-30-78 revenues (EXH 20, line 25). Therefore, without the Royalty contributions, the GAI is incurring expenses and paying benefits in excess of its revenues. As a result, the GAI must continue to receive the 2nd Dollar Royalty in order to maintain benefit payments (EXH 21).

The problems with the expenses appear to be the salary and data processing costs. These two expenditures have grown from 73.84% of total expenses for the FYE 9-30-75 to a total of 89.95% of total expenses for the FYE 9-30-78, excluding benefits paid (EXH 22, p. 1).

Therefore, this issue is primarily limited to these two expenses. Travel and benefit payments were covered previously in this report and will not be repeated.

## SALARY EXPENSES

The first expenses to be analyzed are the employee salaries and related fringe benefit payments to the L/S WVP Plans on behalf of the employees.

The GAI Administrative Office, located in Jacksonville, Florida, had five office employees as of 9-30-78, as follows: (EXH 4 and EXH 23, B-3).

| POSITION | EMPLOYEE | FYE 9-30-78 SALARY |
|---|---|---|
| Plan Administrator | Douglas Ball | $27,294.31 |
| Asst. Plan Administrator | Rosaline Williams | 25,077.85 |
| Bookkeeper | Ray Bills | 17,039.34 |
| Secretary | Diana Spicer | 9,790.32 |
| Secretary | Paula Edwards | 9,609.25 |

In addition to the above, the Jacksonville GAI Administrative Office had a roving inspector, whose job was to make surprise visits to the various ports for compliance purposes (EXH 4, p. 5). As of 9-30-78 these duties were performed by Mr. Isiah Freeman. His salary as of 9-30-78 was $16,925.37 (EXH 23, B-3).

Each of the ports covered under the CBA had dispatchers who were paid employees of the GAI. These men were responsible for "badging in" ILA members on normal work days (EXH 4). The following were employees as of FYE 9-30-78 (EXH 23):

| PORT | DISPATCHER | FYE 9-30-78 SALARY |
|---|---|---|
| N.C. | Chester Gross | $17,730.02 |
| N.C. | John McCoy | 17,966.82 |
| N.C. | James Smith | 18,082.02 |
| N.C. | John Fulton | 17,730.02 |
| N.C. | Gordon Thompson | 364.80 |
| N.C. | James Brown | 576.00 |
| S.C. | Isiah Washington | 17,730.02 |
| S.C. | Richard Brewer | 17,730.02 |
| S.C. | Houston Parson | 10,034.08 |
| S.C. | Benjamin Mitchell | 419.20 |
| S.C. | Harvey Jones | 281.60 |
| Ga. | Thomas Holland | 10,034.08 |
| Ga. | John Mackey | 17,730.02 |

| PORT | DISPATCHER | FYE 9-30-78 SALARY |
|---|---|---|
| Ga. | Richard Fitzerald | $17,835.62 |
| Ga. | Steven Williams | 454.40 |
| Ga. | Bennie Foy | 70.40 |
| Ga. | Freddie Gardner | 35.20 |
| Ga. | Albert Miller | 355.20 |
| Jacksonville | Blyden Geiger | 18,011.62 |
| Jacksonville | Central Peterson | 17,906.02 |
| Jacksonville | Rufus Jones | 1,251.20 |
| Tampa | Alexander Cottman | 18,082.02 |
| Tampa | Lee Jefferson | 18,082.02 |

As a result of the employment of the above individuals the GAI Fund incurred $1,214,564.70 in direct salary expenses for the period 10-1-74 to 9-30-78 (EXH 24). The total personnel expenses including direct salaries, payroll taxes and WVP benefit contributions, for the above period is $1,501,205.90 (EXH 24).

The actual payment of these amounts have been traced to the GAI Cash Receipts and Disbursement Journal (EXH 25). The actual checks were compared to this journal. Since the Fund did incur and pay the above expenses, there does not appear to be a problem with payroll disbursements. Therefore, the issues at hand, are the reasonableness of the salaries and the necessity of the positions.

The first position to be discussed is that of the Assistant Administrator. As previously stated in this report, this position was created shortly after the inception of the GAI Fund. The Employee-Co-Chairman then participated in the hiring of his wife for this position. In addition he has participated in the salary increases for this position.

A request for an interview with MRS. WILLIAMS to determine her duties was denied by the Board of Trustees (EXH 26, 16). Therefore, the need for the Assistant Administrator position could not be ascertained. Furthermore, the reasonableness of the salary could not be determined.

The next position to be discussed is that of the roving inspector. This job requires that MR. FREEMAN, the inspector, make on site visits to insure compliance with GAI hiring preferences (EXH 4 and 27). In an interview, Central Peterson, a Jacksonville dispatcher, stated that MR. FREEMAN visited his work location approximately twice per year. Further, he stated that he did not know what MR. FREEMAN'S duties were (EXH 28).

Another Jacksonville dispatcher BLYDEN GEIGER, stated that MR. FREEMAN visited the Jacksonville Port approximately once monthly and stayed for a period of one day. He did not know what MR. FREEMAN's duties were (EXH 14). Discounting the monthly, bi-yearly discrepancy between MR. GEIGER's and MR. PETERSON's statements and using the monthly figure, MR. FREEMAN could have visited each of the five Ports in ten working days. This would allow him one day between each Port for travel and one day at each Port for inspection purposes. No information was provided as to the whereabouts of MR. FREEMAN during the time he was not engaged in his inspection activities. Using ten working days at eight hours per day would result in MR. FREEMAN working eighty (90) hours per month or 960 hours per year. His annual salary for FYE 9-30-78 was $16,925.37.

Therefore, this would result in an average per hour rate of $18.40. The maximum rate paid to L/S workers, for the FYE 9-30-78 per the Collective Bargaining Agreements effective 10-1-77 was $9.30 (EXH 3). MR. FREEMAN is reimbursed for his travel expenses, therefore, no part of the above salary could be attributed to expenses (EXH 25).

The final position discussed will be the dispatchers. Per the Plan Administrator, MR. BALL, the dispatchers duties were as follows: (EXH 4, p. 9).

1. "Badge" men in and out
2. Collect payroll records
3. Supply employers with blank forms
4. Verify names of vessels being worked
5. Prepare daily dispatcher and hiring level reports

In interviews with the Jacksonville and Savannah dispatchers the duties were determined to be as follows:

SAVANNAH (EXH 29)

DISPATCHER JOHN MACKY

1. "Badge in" and"badge out" men
2. Prepare and mail badge in slips to Jacksonville

3. Prepare daily dispatcher report

4. Prepare daily hiring level report

5. Check docks to verify vessel names

JACKSONVILLE

DISPATCHER BLYDEN GEIGER (EXH 14)

1. "Badge in" and "badge out" men

2. Send badge in slips to GAI

3. Check docks for vessel names approximately 50% of the time. Other days he phoned the companies to see what ships they are working.

4. If there is a 1:00 PM hiring he holds a 11:00 AM shape up

DISPATCHER CENTRAL PETERSON (EXH 28)

1. "Badges in" and "badges out" men

2. Checks docks at least 3 days per week to verify vessel names

3. If there is a 1:00 PM hiring an 11:00 AM shape up is held. This is for the convenience of the men.

As can be seen from the above, the primary duties of the dispatchers appears to be as described by MR. BALL. In order to clarify the above duties some background information is required.

The GAI Fund was established to guarantee that the L/S employees received pay for at least 1250 hours per year. However, to prevent abuse a debiting system was installed whereby men who did not report for work were penalized. These penalties were used to reduce the 1250 hour minimum guaranteed hours. To enforce the requirement to be available for work, the men are required to present themselves and be "Badged in" at the Union Hall each work day.

The CHAIRMAN. Actually, what we are finding here is that not only was there $9,000 improperly taken but maybe as much as $22,000; that the payoffs were made in order to purchase labor peace, and we do not know how the employees were ripped off as a result of that or what those peace conditions actually involved. Aren't those statements true?

Mr. DAY. Yes.

The CHAIRMAN. Now, as I understand it, Mr. Williams was and is a trustee and an employee cochairman of this fund, is he not?

Mr. DAY. That is true, the guaranteed annual income fund.

The CHAIRMAN. The GAI.

Mr. DAY. The GAI.

The CHAIRMAN. This report states that Mr. Williams participated in the appointment of his spouse, Rosalind Williams, to the position of assistant administrator of the fund, in apparent violation of section 406(b)(1) of ERISA. Isn't that correct?

Mr. DAY. Yes, sir.

The CHAIRMAN. What were Mrs. Williams' duties as assistant administrator of the fund?

Mr. DAY. We were unable to interview Mrs. Williams with respect to her duties.

The CHAIRMAN. Therefore, you were not able to determine that, I take it?

Mr. DAY. That is true.

The CHAIRMAN. As I understand it, the trustees prevented you from speaking with her about her duties.

Mr. DAY. Yes, sir.

The CHAIRMAN. According to your report, Mrs. Williams' salary was more than $25,000 a year, as opposed to only $27,000 for the plan administrator. Is that correct?

Mr. DAY. Yes, sir, in 1978.

The CHAIRMAN. You see, Mr. Ryan, I believe this is a lot more than a $9,000 issue. We are talking about purchasing labor peace. We are talking about $22,000. We are talking about a $25,000-plus salary under a complete violation of ERISA, so it is a lot more than maybe has been represented to you by some members of your staff.

Well, in addition Mr. Landon Williams, as I understand it, had on occasion participated in board of trustee actions regarding pay increases or Christmas bonuses for Mrs. Williams. Is that right?

Mr. DAY. Yes, sir.

The CHAIRMAN. Were any other members of the Williams family hired by the union or these employee funds?

Mr. DAY. Yes, sir.

The CHAIRMAN. As a matter of fact, Mr. Williams' son was hired as an ILA royalty fund dispatcher. Is that not correct?

Mr. DAY. That is true, but the royalty fund is an uncovered fund.

The CHAIRMAN. I understand, but nevertheless it shows a propensity to play around with these funds, doesn't it?

Mr. DAY. Yes, sir.

The CHAIRMAN. In your opinion, it would be.

Mr. Day, you found in the November 28, 1979, report of investigation on the GAI fund that the trustees of the fund had failed to insure that administrative expenses were reasonable and necessary, in apparent violation of section 404(A)(1)(a) of ERISA. What was the breakdown of administrative expenses to benefits paid out? Do you remember?

Mr. DAY. Benefits paid were some $700-some thousand—no, that was the administrative cost, and the——

The CHAIRMAN. Let's see if I can help you. As I understand it, in fiscal 1978 $718,000 in administrative expenses versus $990,000 in benefit payout. Isn't that correct?

Mr. DAY. That is my recollection.

The CHAIRMAN. Therefore, the administrative expenses were more than 70 percent of the benefit payout. Is that correct?

Mr. DAY. That is true. The administrative costs were approaching the benefits actually paid.

The CHAIRMAN. It is almost unbelievable there, isn't it?

Mr. DAY. It is very large, in my opinion.

The CHAIRMAN. It is a lot more than $9,000.

What is a reasonable ratio of administrative expenses to payout?

Mr. DAY. I do not believe that we have established what a reasonable ratio is.

The CHAIRMAN. As I understand it, you simply think that $718,000 is a lot more than they should be spending.

Mr. DAY. Yes, sir. Our report documented several areas that we thought should be looked at as far as the amount of the administrative costs and we are in the process of voluntary compliance, attempting to achieve through voluntary compliance a reduction of those or the amount of those expenses.

The CHAIRMAN. Well, it seems to me you ought to because the administrative costs of the fund are approaching the total benefits paid out.

Mr. DAY. Yes, sir.

The CHAIRMAN. I do not know about you but I think that is abominable. Don't you?

Mr. DAY. I agree.

The CHAIRMAN. OK. Some of your office's reports of interviews with the GAI fund officials would indicate that this fund is featherbedded, and that many of these apparently unnecessary employees think they owe their jobs to Landon Williams. Isn't that correct?

Mr. DAY. Yes, sir.

The CHAIRMAN. Let me call your attention to an August 8, 1979, report of an interview by auditor Robert Snyder of your office with an employee of the GAI fund whose name will be deleted at this time. Are you familiar with this report of the interview?

Mr. DAY. Yes, sir.

The CHAIRMAN. Well, let me enter the report of interview into the record as Day Document No. 7 at this point, without objection.

[Day Document No. 7 follows:]

'Day Document # 7

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Washington Square Office Building - 111 N.W. 183rd Street, Suite 504
P. O. Box 3750, Norland Branch
Telephone No. (305)350-4611 Miami, Florida 33169

DATE: August 8, 1979

REPLY TO ATTN OF: Robert Snider Robert Snider
Auditor

SUBJECT: SOUTH ATLANTIC GAI
Case #42-4735

TO: CONFIDENTIAL MEMO TO FILE

(NAME DELETED) , was informally questioned at the South Atlantic GAI Office, Tampa, Florida on the above date at approximately 3:00 P.M. by Auditor Robert Snider.

In response to questioning, _____ provided the following information:

1. GAI Dispatchers at the Tampa, Wilmington and Savannah Ports "Badge-in" the men at approximately 7:00 A.M. for the 8:00 A.M. and 1:00 P.M. starting times. The dispatchers at the Jacksonville Port "Badge-in" the men at approximately 7:00 A.M. for the 8:00 A.M. starting time and approximately 12:00 Noon for the 1:00 P.M. starting time. _____ was not sure of the "Badging-in" procedure at the Charleston Port.

   _____ indicated that other work starting times were not relevant to the GAI Fund because GAI men were not given hiring priority. Thus the men would not be subject to debiting, and accordingly, dispatcher procedures are unnecessary. (Writer's note: Refer to clause 3(B)(3) (f)(1)1. of the October 1, 1977 Collective Bargaining Agreement).

2. The Dispatchers at all five Ports "Badge-out" the men who do not obtain work.

3. After completion of the badging function the dispatchers are responsible for "on-site" inspection of the Ports to document ship arrivals and departures. The dispatcher performs this duty by completing a monthly "Vessel Log." This document is forwarded to the Jacksonville GAI office where it is recopied on a "Vessel Log" by company and used to verify the contributing employers' remittance reports.

4. The writer questioned the need for the dispatchers to prepare the "Vessel Log" by daily"on-site" inspections because the same information should be available on the ships manifests, which could be tabulated monthly. [redacted] first stated that he felt the "Vessel Log" contributed to internal control procedures of the fund. However, he did agree upon further questioning that the same data could be tabulated from each ship's manifest which are retained by customs for example.

5. The writer then questioned the need for more than one dispatcher at each port. [redacted] stated that he was told that one dispatcher would create a bottleneck in processing the men for shaping up. (Writer's note: [redacted] then made a gesture to move to the corner of the room where he commenced to speak quietly in which he stated the following):

   a. He had questioned the Trustees in the past for need of more than one dispatcher at each port. The issue ended abruptly by the Trustees stating in effect that they did not want to discuss the subject. No comments were made in the minutes of the issue.

   b. The dispatchers' job was a highly political issue, if I knew what he meant.

   c. Rosiland Williams, wife of Landon, made the day-to-day decisions of the GAI Fund. (Writer's note: [redacted] intermittently adlibbed trite talk at a normal voice and peered around the corner to see if anyone was listening.)

The **Chairman**. On page 2 of this report, Mr. Snyder says he questioned "Mr. Blank"—I will delete the name—about the need for more than one dispatcher at each port. Mr. Snyder said that "Mr. Blank," after stating that he was told that one dispatcher would create a bottleneck in processing the men for work:

> * * * then made a gesture to move to the corner of the room where he commenced to speak quietly as follows: (a), he had questioned the trustees in the past for need of more than one dispatcher at each port and the issue ended abruptly by the trustees stating in effect that they did not want to discuss the subject and no comments were made in the minutes of the issue; (b) the dispatcher's job was a highly political issue, if I knew what he meant; (c) Rosalind Williams, wife of Landon, made the day-to-day decisions on the GAI Fund.

I might mention that "Mr. Blank" person intermittently adlibbed trite talk in a normal voice and peered around the corner to see if anyone was listening, according to this report.

My question is this, Mr. Day: Do you believe that only one dispatcher per port is necessary, or could they have justification for loading them up as they did?

Mr. **Day**. Our report of investigation would lead me to believe that that is an area that should be looked at as a possible reduction of the administrative costs of this fund.

The **Chairman**. As I understand it, the answer to my question if there should only be one dispatcher per port is yes, that you feel that that is right, and that that is only one of the areas where you think that they should find economies of cost to that particular fund. Is that correct?

Mr. **Day**. Yes, sir.

The **Chairman**. Now as I understand it, the duties of the dispatcher are that he insures that members of the GAI fund get first chance at being hired because they will have to pay unemployment benefits if GAI members do not get in 1,250 hours a year. Isn't that correct?

Mr. **Day**. That is true.

The **Chairman**. Do you think that the hiring of dispatchers enhances Mr. Williams' power in the union?

Mr. **Day**. It may.

The **Chairman**. It sure looks that way, doesn't it?

Mr. **Day**. Yes, sir.

The **Chairman**. As a matter of fact, if you really look at it carefully there is almost no question at all that he has been using that to enhance and keep his power in the union. Isn't that correct?

Mr. **Day**. It may be, Senator. We interviewed several of the GAI inspectors, and their testimony through the reports of interview indicate that they considered Mr. Landon Williams their boss.

The **Chairman**. In other words, they considered him their boss, not the trustees——

Mr. **Day**. Not the fund trustees, the board of trustees.

The **Chairman** [continuing]. Who were in fact their bosses, right?

Mr. **Day**. Or the administrator of the fund.

The **Chairman**. Or the administrator of the fund. Therefore, any reasonable conclusion would lead you to believe that these funds have been used and these positions have been used for political purposes, to keep power in the union. That is a reasonable conclusion, isn't it?

Mr. DAY. It appears to be a reasonable conclusion.

The CHAIRMAN. OK. How much can be saved by cutting back to one GAI dispatcher per port?

Mr. DAY. The GAI dispatchers were receiving some $17,000 to $18,000 in annual salary in 1978. There are nine ports involved, two GAI dispatchers per port. Nine times—maybe, possibly, $150,000 to $200,000 per year.

The CHAIRMAN. Therefore, it would be somewhere over $150,000 and maybe as much as $200,000 that could be used for benefits of the employees. Is that correct?

Mr. DAY. Yes, sir.

The CHAIRMAN. That are being eaten up for what appear to be political purposes by Mr. Landon and the people who take these jobs.

Mr. DAY. Yes, sir.

The CHAIRMAN. Turning again briefly to your October 24, 1979, report of investigation of the pension fund, I have a question about the advances and expenses incurred by fund trustees in connection with travel, seminars, and conventions. On page 14 of this report, you state that during the period of January 1, 1975 to September 30, 1978, the trustees failed to require proper documentation for advances of $32,578 that the trustees authorized themselves and other employees of the fund for the purposes just mentioned. My staff added up the unsubstantiated advances for the seven other funds that appear in your report and came up with a total of almost $85,000 in unsubstantiated travel, seminar, and convention expenses for the trustees of all eight plans, who usually happen to be the same people in each case. Of the total amount, Landon Williams collected more than $9,000. Now do my staff's figures sound familiar to you or accurate to you?

Mr. DAY. Yes, sir.

The CHAIRMAN. Therefore, I think there is a lot more than what meets the eye. We are talking about as much as $200,000 for unnecessary dispatchers; we are talking about another $85,000 here in unsubstantiated travel and expenses. Maybe all of it is not a waste of these funds but, on the other hand, there are some pretty serious things here and here is Landon Williams getting $9,000 out of that. Then his wife is put on the fund for $25,000-plus. His son becomes an employee of the fund and, you know, these are pretty serious things. This is not some little thing and I submit this is not the only local that has these problems. If you compound it, it becomes a big issue.

Mr. Day, I want to compliment you for your work.

Mr. DAY. Thank you.

The CHAIRMAN. I think it has been good. Mr. Day, you have documented numerous violations of ERISA by Landon Williams and by the other eight employee plans, or trustees of the other eight plans associated with Local 1408 of the International Longshoremen's Association, and you did all this before 1979. Now to your knowledge, has anything been done by the Labor Department to correct these abuses?

Mr. DAY. Yes, sir.

The CHAIRMAN. Tell me what.

**Mr. Day.** The cases were returned to the area office in late 1981 and we have sent notice letters to each of these funds. We have listed all the violations. We have listed the amounts in violation and we are in the middle of voluntary compliance efforts.

**The Chairman.** Has any action been implemented, actually implemented?

**Mr. Day.** As far as an audit or investigation? No, sir.

**The Chairman.** Thank you very much, Mr. Day. I think you have done all you could with this case, and the inaction in my opinion certainly is not your fault, you know. In our efforts to document what went on up the line in the Labor Department bureaucracy, we will next hear from Mr. William D. Sexton, the regional administrator in Atlanta.

Mr. Sexton, I think you were the regional administrator in the Department during the period in which this case was considered by the Labor Department. Is that not right?

**Mr. Sexton.** Yes, sir. I was actually appointed in November 1979 but most of the year of 1979 I was acting before I was appointed. Before that, I was actually the assistant regional administrator for the ERISA program.

**The Chairman.** Therefore, you have been right there, then.

**Mr. Sexton.** I have been familiar with these cases. The truth of the matter is, my assistant at that time, Mr. Howard Marsh and I, in 1978 when these people were indicted, started the process that resulted in all the investigations made in this area.

**The Chairman.** As I understand it, both you and Mr. Day work on the enforcement side of ERISA. You do not work for the Solicitor. Is that correct?

**Mr. Sexton.** That is correct.

**The Chairman.** You make recommendations and reports of investigations and you send them to the Solicitor's Office for action. Is that right?

**Mr. Sexton.** Actually, I send them to the Office of Enforcement here, and the Office of Enforcement——

**The Chairman.** They refer them.

**Mr. Sexton.** They deal with the Solicitor's Office here, yes.

**The Chairman.** Let me make sure that I understand the chain of command that was involved on the enforcement side in this case. Now as I understand it, Mr. Day reports to the Miami area administrator, who used to be Mr. Carl Crouch——

**Mr. Sexton.** Yes, sir.

**The Chairman** [continuing]. And is now Mr. B. R. Withers, Jr.

**Mr. Sexton.** Yes, sir.

**The Chairman.** Mr. Withers reports to you in Atlanta——

**Mr. Sexton.** Yes, sir.

**The Chairman** [continuing]. And you report to the Director of the Office of Enforcement in Washington, who then can refer it——

**Mr. Sexton.** For program matters of this type, yes, sir, on ERISA.

**The Chairman.** Would I be accurate in stating that Mr. Day, Mr. Crouch, and Mr. Withers have recommended, without any deviation at any point over the past 3 years, that a lawsuit should be entered into to remove Landon Williams from office prior to completion of his appeal from conviction?

Mr. SEXTON. Yes, sir, that is true.

The CHAIRMAN. You have consistently supported that position.

Mr. SEXTON. Yes, sir, that is true.

The CHAIRMAN. I see that the proposal to remove Williams also had the strong support of Mr. Edward F. Daly, the Director of the Office of Enforcement, until his retirement in early 1980. Is that right?

Mr. SEXTON. Yes, sir. I have copies of memorandums which indicate that is true. Yes, sir.

The CHAIRMAN. On October 22, 1979, Mr. Daly wrote Ms. Monica Gallagher, the Associate Solicitor, that "This office agrees with the recommendations of the area and regional offices that action be taken to remove Williams as soon a possible in order to preclude the possibility of further loss of plan assets." Do you recall whether Mr. Daly ever got a response to his letter from Ms. Gallagher?

Mr. SEXTON. I have no copy if he did.

The CHAIRMAN. Therefore, as far as you know he did not.

Mr. SEXTON. As far as I know he did not. There was some later correspondence from the Solicitor's Office.

The CHAIRMAN. Our review of the files shows that there was no response.

Mr. SEXTON. Yes, sir. I do not recall any.

The CHAIRMAN. Well, we will enter into the record as Sexton Document No. 1, the Daly letter, without objection, at this point.

[Sexton Document No. 1 follows:]

Sexton
Document #1

① Jess & Info
② Bill
. LBS ③ Xerox to each
case file

OCT 22 [illegible]

**MEMORANDUM FOR:** Ms. Monica Gallagher
Associate Solicitor

**FROM:** Edward F. Daly
Assistant Administrator
for Enforcement

**SUBJECT:** Removal of Trustee, Landon Williams
ILA Welfare Benefit Plans
Jacksonville, Florida
Case Nos. 42-4605 - 42-4610
42-4735 and 42-4759

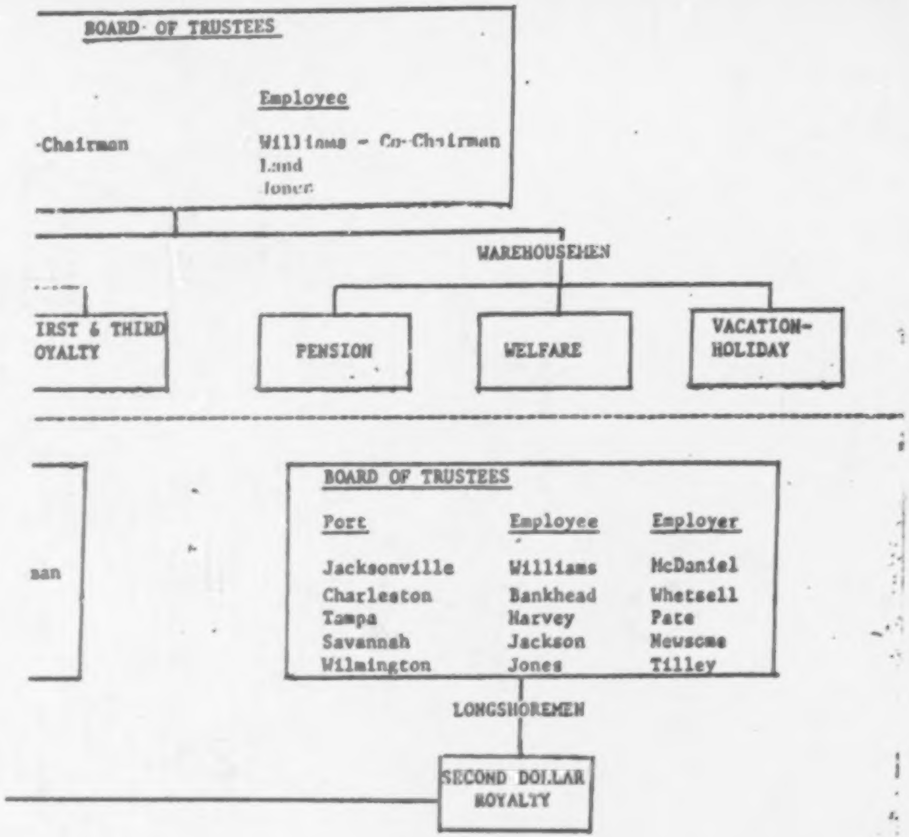
Attached hereto are memoranda and attachments from the Miami Area and Regional Offices regarding the fact that Landon Williams, who has been convicted and ordered stripped of his position, is presently still serving as trustee. Williams is appealing his conviction and may remain in Office until he has exhausted all appeals. This Office agrees with the recommendations of the Area and Regional Offices that action be taken to remove Williams as soon as possible in order to preclude the possibility of further loss of plan assets. The evidence sent forward clearly supports the removal of Williams for being in violation of Act Section 404.

Williams' situation is somewhat different from that of Ray Lane, a trustee who was removed because of a Section 411 violation. The following is a summary of Lane's situation. Lane pled guilty in January 1979, and his sentencing was set for August 1979. Subsequently, Lane did move to withdraw his guilty plea. However, the court denied his motion. Lane appealed the denial. On April 12, 1979, Lane filed a complaint against the Secretary of Labor for not acting - i.e., declaring what his duties were under ERISA. Lane had been advised that he would no longer be bonded nor would his fiduciary insurance be renewed after May 1, 1979. The Secretary obtained a temporary restraining order on April 25, 1979, removing Lane and enjoining other trustees from resigning. The Court issued an injunction and removed Ray Lane on May 1, 1979.

Williams is trustee of several employee benefit funds.

A bond was obtained for the ILA Pension, Welfare and Vacation Funds in March 1979. The amount ($500,000) is insufficient. Coverage in the amount of $737,555 is required as the bond covers several plans. Further, Williams is associated with several Warehousemen funds (Pension and Vacation/Holiday) for which he is not bonded. Those plans have approximately 200 participants and assets of $1.2 million. Attached is the bond as well as the bonding computation prepared by the Area Office.

Attachments


BOARD OF TRUSTEES
-Chairman
Employee
Williams - Co-Chairman
Land
Jones
WAREHOUSEMEN
IRST & THIRD
OYALTY
PENSION
WELFARE
VACATION-
HOLIDAY
man
BOARD OF TRUSTEES
Port
Employee
Employer
Jacksonville
Williams
McDaniel
Charleston
Bankhead
Whetsell
Tampa
Harvey
Pate
Savannah
Jackson
Newsome
Wilmington
Jones
Tilley
LONGSHOREMEN
SECOND DOLLAR
ROYALTY

Above

Note

All Second Dollar Royalty Collections
are sent directly to GAI Fund Per
Resolution of Board of Trustees

The CHAIRMAN. The record shows that Mr. Daly continued to support this course of action. On February 29, 1980, he wrote Mr. Norman P. Goldberg, Counsel for Litigation under Ms. Gallagher, that "It is our opinion that immediate action should be taken to remove Williams as the trustee of subject funds." Mr. Goldberg rejected Mr. Daly's recommendation, did he not?

Mr. SEXTON. Yes, sir, that is true.

The CHAIRMAN. This had been the recommendation not only of Mr. Daly but also of everyone else down the line in enforcement. Isn't that correct?

Mr. SEXTON. Yes, sir.

The CHAIRMAN. Let me enter the second Daly letter into the record at this point as Sexton Document No. 2.

[Sexton Document No. 2 follows:]

JLWD/NWB

F1153

Sexton
Document #2

MEMORANDUM FOR: Norman Goldberg
Counsel for Litigation

FROM: Edward F. Daly
Assistant Administrator
for Enforcement

SUBJECT: South Atlantic ILA/GAI Fund
Jacksonville, Florida
Case No. 42-04735(48)

This Office has reviewed the Action ROI on subject plan and concurs that plan trustee, Landon Williams should be removed. Landon Williams has been convicted of accepting payoffs to maintain labor peace. Williams is also a trustee of the other six Jacksonville ILA plans.

It is our opinion that Williams violated Act Section 406(b)(1) by participating in decisions concerning the continued employment of his spouse, Rosalind Williams, as Assistant Administrator of subject plan. Williams was also aware that subject plan was remitting contributions on its employees on less than actual hours worked. This resulted in subject plan becoming indebted to other ILA plans in the South Atlantic Region. Williams also participated in the hiring of his son as a Royalty inspector for the Container Royalty Fund. The investigation also established that Williams caused monies from other Longshoremen's benefit funds to be transferred to the Royalty Fund so that the payouts would be made prior to the union elections. Williams' actions are not in the interests of plan participants; therefore, it is our opinion that his continuing as a trustee of the Jacksonville ILA plans and subject plan is a violation of Act Section 404(a)(1).

The trustees have also violated Act Section 404(a)(1) by paying excessive administrative fees and by failing to take effective measures to reduce and collect benefit overpayments.

Miami, RO

The trustees have received advances to attend meetings and conferences and have not properly accounted for those advances. These actions are in violation of Act Sections 404(a)(1), 406(a)(1)(B) and 406(a)(1)(D).

The trustees have also violated Act Section 412 in that they are unable to secure adequate bonding coverage because of the adverse publicity generated by the ILA trial.

It is our opinion that legal action should be taken to restore plan monies lost as a result of fiduciary violations and to remove Landon Williams as a trustee. It is our opinion that legal action is the only way to recover plan monies. The plan actuary and CPA state that the trustees will voluntarily comply; however, the trustees' cooperation during the investigation does not indicate that they will restore plan monies lost as a result of fiduciary breaches.

Your concurrence is requested.

Jcc: Chron
Enforcement
Lanoff Info
SOL Referral
Atlanta, RO
Miami, AO

LMSA:PWBP:ENFORCEMENT:DFSI:BARTLETT:ccp
2/9/80 N4720 38845

Sexton Dec. #12

FEB 29

MEMORANDUM FOR: Mr. Norman Goldberg
Counsel for Litigation -
Attention: Bob Eccles

FROM: Edward F. Daly
Assistant Administrator
for Enforcement

SUBJECT: Jacksonville ILA Longshoremen's
and Warehousemen's Funds
Case Nos. 42-4605 through
42-4610

Attached is a supplemental ROI on subject funds which contains information regarding Williams' conviction in Miami. This report indicates that the total loss to the funds which was a result of Williams accepting kickbacks to maintain labor peace was $9143.89. This report also discloses that Williams was recently indicted in Jacksonville.

It is our opinion that immediate action should be taken to remove Williams as a trustee of subject funds.

Your concurrence is requested.

Attachments

cc: Enforcement 42-4605 42-4606, 42-4607, 42-4608, 42-4609 and
42-4610
Chron SOL Referral Lanoff Info Miami AO
Atlanta RO

LMSA:PWBB:ENFORCEMENT:DFSI:GBartlett:cak
2-28-80 N4720 Ext. 38345

The CHAIRMAN. Now Mr. Goldberg declined litigation to remove Williams in a July 30, 1980, letter to Mr. Daly's successor, Mr. Mervyn Schwedt. Mr. Goldberg based his decision on grounds that following Williams 'conviction in the Miami bribery trial, Williams had been acquitted on an income tax evasion charge in Jacksonville involving the same testimony that was involved in Miami. Did you acquiesce to Mr. Goldberg's position, Mr. Sexton?

Mr. SEXTON. My recommendation was that he be removed, and then this was the Solicitor's recommendation. I was not asked to acquiesce or decline either one but had I been asked, I would have wanted him removed.

The CHAIRMAN. In other words, you did not agree with that decision.

Mr. SEXTON. Yes, sir.

The CHAIRMAN. However, since it had been made by people higher up, you did not have anything you could do to change it.

Mr. SEXTON. That is correct, sir.

The CHAIRMAN. In a June 30, 1981, letter to Ian Lanoff, Administrator of the pension and welfare benefit program, the new Acting Administrator for Enforcement, Mr. Alan D. Lebowitz, stated he did not "disagree" with the Solicitor's disposal of the case, and he stated that if Mr. Lanoff concurred—which he apparently did—Mr. Lebowitz would prepare and submit voluntary compliance letters to the Atlanta region for issuance to the trustees of the respective plans. Are you familiar with that letter?

Mr. SEXTON. Yes, sir, I am.

The CHAIRMAN. Let me put the Goldberg letter into the record at this point as Sexton document No. 3 and then this letter as Sexton Document No. 4, into the record at this point, without objection.

[Sexton Documents Nos. 3 & 4 follow:]

Sexton #3

JUL 30 1980

MEMORANDUM TO: MERV SCHWEDT
Acting Assistant Administator for Enforcement

FROM: NORMAN P. GOLDBERG
Counsel for Litigation

SUBJECT: Removal of Trustee Landon Williams
ILA Employee Benefit Plans

Case Nos. 42-4605 through 42-4610
42-4735
42-4759

This matter was referred to us by memorandum dated October 22, 1979, with a recommendation that the Department of Labor act to remove Landon Williams as a trustee for certain ILA employee benefit plans. For the reasons discussed below, we do not believe that the Department should institute a new action to have Williams removed as a trustee before his appeal, which is now pending before the U.S. Court of Appeals, is resolved.

## FACTS

Landon Williams serves as a trustee for the Jacksonville ILA Longshoremen's and Warehousemen's pension, welfare, and vacation plans and for the South Atlantic ILA Guaranteed Annual Income Fund. In September, 1979, Williams was convicted in a federal district court in Miami of receiving unlawful kickbacks from United Trailer Services, Inc., a contributing employer to the Jacksonville Longshoremen's pension, welfare, and vacation plans. 1/ In a separate federal district court trial in Jacksonville, Williams was acquitted in March, 1980, of federal income tax evasion. The United Trailer kickback payments were the basis of two counts of the complaint in that case.

## DISCUSSION

ERISA section 411(a) provides that any person who has been convicted of certain crimes, including those of which Williiams was convicted, may not serve as a trustee of any employee benefit plan for five years after the conviction. Section 411(c)

---

1/ The Miami Area Office has determined that the three plans lost a combined total of about $9,000 in contributions from United Trailer as a result of these kickbacks.

further provides that if an appeal is filed, the five year period does not begin to run until the date of the final sustaining of the judgment of conviction. Thus, Landon Williams may continue to serve as a trustee for the ILA employee benefit plans until the Miami district court's judgment is finally sustained.

To effectuate the removal of Williams in the meantime, the area and regional offices have suggested that the Secretary of Labor bring an action under section 502 of the Act on the theory that Williams violated section 406(b)(3) in receiving the United Trailer kickbacks. To obtain an order removing Williams as a trustee, we will have to adduce much of the same evidence that was presented in the two criminal trials. This evidence consisted of testimony of Robert Gillespie, an officer of United Trailer who made the kickback payments, and certain documents tending to establish the actual payments.

Williams, as noted above, was acquitted in the Jacksonville trial. We would have to rely on much of the same testimony that Gillespie gave in Jacksonville and Miami, and since his testimony apparently was insufficient to obtain a conviction in one of the two cases, there is reason to be concerned that his testimony will not be sufficiently persuasive to entitle us to removal in a civil action.

For these reasons, and because the appeal may be decided in the near future, we recommend that no further action be taken at this time. If the judgment of conviction is affirmed, it would be unnecessary for us to bring an independent action to have Williams removed as a trustee, since section 411 will prohibit him from serving as a trustee for any employee benefit plan for five years. On the other hand, if the judgment is reversed, the Department can reconsider the need to bring an independent action under section 502 to have Williams removed.

Sexton #4

**U.S. Department of Labor**

Labor-Management Services Administration
Washington, D.C. 20210

Reply to the Attention of: OE:DFSI

JUN 30 1981

MEMORANDUM FOR: Ian D. Lanoff
Administrator

FROM: Alan D. Lebowitz
Acting Assistant Administrator
for Enforcement

SUBJECT: Investigations of the International Longshoremen's Association conducted by the Atlanta Region

As you are aware, the Senate Permanent Subcommittee on Investigations, hereinafter the subcommittee, conducted hearings earlier this year on the International Longshoremen's Association, hereinafter the ILA. The major concerns expressed during these hearings regarded the activities and convictions of certain officials of the ILA and their continuation in office after conviction.

As a result of the ILA hearings and hearings previously conducted by the subcommittee concerning labor racketeering in unions and their employee benefit plans, Senator Sam Nunn and three other senators introduced the "Labor Racketeering Act of 1981" (S1165). The bill provides for the immediate suspension of convicted persons from union offices. Any individuals who deal with labor organizations or employee benefit plans directly or indirectly would be affected by the provisions of the bill.

Attached is a copy of a memo prepared by the Atlanta Region detailing their investigations of convicted ILA officials who have control or influence over employee benefit plans and of other aspects of the plans. Nineteen of the ILA investigations were referred to the Solicitor's Office (SOL) for a legal analysis. On May 14, 1981, these cases were returned by SOL. Of the total number of investigations referred to SOL, SOL recommended no further action on four cases, voluntary compliance on thirteen cases, and litigation on two cases.

It should be noted that a separate referral was made concerning the removal of Landon Williams, who is Chairman of the Board of Trustees of the Jacksonville ILA employee benefit plans. SOL responded on July 30, 1980, that in its opinion the Department of Labor (the Department) should not institute a new action to have Williams removed as a trustee before his appeal, which is now pending before the U.S. Court of Appeals, is resolved. SOL's opinion dated May 14, 1981, recommends that the Department seek voluntary compliance with respect to the ERISA violations uncovered during the investigations of plans in which Williams is involved. Williams has been of particular interest to the subcommittee since Marty Steinberg, Chief Counsel to the minority, was involved in the Department of Justice investigation while he was strike force attorney in Miami. During the investigation, the Miami Area Office received several requests from the subcommittee concerning action we proposed to take with respect to Williams.

We do not disagree with SOL's recommendations. However, due to the sensitive nature of these cases, we thought you should be aware of SOL's recommendations not to litigate the majority of them. If you concur with the proposals as outlined in the attached memoranda from SOL, we shall prepare and submit appropriate voluntary compliance letters to the Atlanta Region for issuance to the trustees of the respective plans.

Attachments

The **Chairman**. On October 8, 1981, a draft voluntary compliance letter asking the trustees of the various local 1408 employee benefit funds to do such things as account for their travel advances and stop transferring funds between plans was sent to you by Mr. Lebowitz. Do you recall this letter?

Mr. **Sexton**. Yes, sir.

The **Chairman**. Then we will put the letter into the record—actually, we will put that Document No. 4 into the record at this point and include the draft compliance letter as Sexton Document No. 5 in the record without objection at this point.

[Sexton Document No. 5 follows:]

Sexton #5

OCT - 8 1981

MEMORANDUM FOR: William D. Sexton
Regional Administrator, Atlanta

FROM: Alan D. Lebowitz
Acting Assistant Administrator
for Enforcement, PWBP

SUBJECT: Jacksonville ILA Longshoremen's
Pension, Welfare and Vacation/Holiday
Plans (the Plans)
Case Nos. 42-4605(48)
42-4606(48)
42-4607(48)
42-4608(48)
42-4609(48)
42-4610(48)

Attached is a copy of a memorandum from the Office of the Solicitor dated May 14, 1981, recommending that a notice letter be sent to the trustees concerning violations of ERISA disclosed by the investigation of subject plans and to seek voluntary compliance.

Attached also is a copy of a proposed notice letter for the Area Administrator's signature, which we suggest be sent to the Board of Trustees of the Plans.

Please keep the Office of Enforcement advised of developments.

Attachments

cc: Miami AO

Enforcement
Chron
Lanoff Info
Bartlett

LMSA:PWBP:ENFORCEMENT:DPSI:KENNELLY:ccm
10/7/81 N4720 38845

DRAFT

Board of Trustees
Jacksonville ILA Longshoremen's and Warehousemen's
  Pension, Welfare and Vacation/Holiday Plans
1336 Haines Street
Jacksonville, Florida  32206

Dear Sirs:

The Department of Labor has responsibility for the administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans like the Jacksonville ILA Longshoremen's Pension, Welfare and Vacation/Holiday Plans (the Longshoremen's Plans) and the Jacksonville ILA Warehousemen's Pension, Welfare and Vacation/Holiday Plans (the Warehousemen's Plans).

This office has concluded its investigation of the Longshoremen's Plans and the Warehousemen's Plans and of your activities as their trustees after January 1, 1975. Based on the facts gathered during this investigation, and subject to the possibility that additional information may lead us to revise our views, it appears that as trustees you may have breached your fiduciary obligations to the Longshoremen's Plans and the Warehousemen's Plans and may have violated several provisions of ERISA. The purpose of this letter is to advise you of our findings and to give you an opportunity to comment before the Department determines what, if any, action to take.

As we understand the facts, each plan is funded entirely by employer contributions made pursuant to local collective bargaining agreements (CBAs). The CBAs, however, do not specify the amount of contributions for each plan; they simply require the employers to make a lump-sum contribution for each hour worked by covered employees. The contributions are placed in an escrow account and each year you decide how the lump-sum employer contributions will be allocated to the Longshoremen's Plans and the Warehousemen's Plans and to an administrative fund from which all expenses for the plans are paid.

The hourly rate for employer contributions has been increased as of October 1st in each year since 1974. You, however, have made your allocation decisions each year after the new contribution rates became effective.

The investigation disclosed that you have transferred funds from one plan to another and have not distributed employer contributions to the plans in accordance with your own allocation formula. Section 5 of the Declaration of Trust provides that "The Trustees shall have full power and authority to apportion and allot (and in their discretion to change the apportionment and allotment) to each plan a proportion of the Employer's total contribution, but contributions once received, allotted and dedicated to a particular plan shall not thereafter be changed or transferred to another plan."

You serve as trustees for both the Longshoremen's Plans and the Warehousemen's Plans. The plans have different classes of beneficiaries, different standards of eligibility for the receipt of benefits, and different levels of benefit payments. Therefore, the plans, when involved in the same transaction, have adverse interests that cannot simultaneously be represented by the same trustees. Accordingly, you have violated ERISA section 406(b)(2) by transferring funds between the plans with the result that the plans became indebted to each other. ERISA section 406(b)(2) provides that a fiduciary with respect to a plan shall not in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

Moreover, it is unlawful under ERISA section 406(b)(2) for the same individuals who serve as trustees for these separate plans that are funded jointly through lump-sum employer contributions to decide how those contributions will be allocated to each plan.

It also appears that you have violated the plan documents in transferring funds between the plans. Since you transferred employer contributions from one plan to another after you had allocated them to particular plans, you failed to follow section 5 of the Declaration of Trust. In our view, this is a violation of ERISA section 404(a)(1)(D) which provides that:

> (a)(1) . . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ---
>
> (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

The investigation also disclosed that you have failed to require a proper accounting of attorneys fees and travel and education expenses incurred by the plans' administrator and plans' attorney.

Further, the investigation disclosed that the plans' attorney, Clark Toole, receives an annual retainer. Mr. Toole's annual retainer beginning January 1, 1975 was $7500 and was increased to $10,000 on January 1, 1978. The plans have also paid Mr. Toole fees that he deemed to be outside the scope of his retainer agreement without requiring an itemized bill to determine the reasonableness of the fees.

ERISA section 404(a)(1), which generally became effective January 1, 1975, sets forth a standard of behavior governing the exercise by fiduciaries of their duties with respect to the plan. As fiduciaries of the Longshoremen's and Warehousemen's Plans, subject to ERISA, you are required to meet that standard, as follows:

> . . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ---
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan;
>
> (B) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; . . .

In our view, you have violated your fiduciary duties imposed by ERISA sections 404(a)(1)(A) and (B) by not requiring documentation of attorneys' fees outside the scope of the retainer agreement and by not requiring a proper accounting of travel and education expenses incurred by the plans' administrator and attorney. Furthermore, your failure to require a proper accounting of traval expenses is a violation of ERISA section 406(a)(1)(B) which prohibits the lending of money or other extension of credit between a plan and a party in interest and ERISA section 406(a)(1)(D) which prohibits the use by, or for the benefit of, a party in interest of any assets of the plan.

However, ERISA section 408(c)(2) provides that nothing in ERISA section 406 shall be construed to prohibit the reimbursement by a plan of expenses properly and actually incurred by a fiduciary in the performance of his duties with the plan. Department of Labor Regulation section 2509.75-6 further clarifies the exemptive provisions of section 408(c)(2). According to the regulation, a plan may make an advance to a fiduciary or other party in interest to cover direct expenses to be properly and actually incurred by the fiduciary in the performance of his duties if the amount of the advance is reasonable with respect to the amount of the direct expenses likely to be properly and actually incurred and if the fiduciary accounts to the plan at the end of the period covered by the advance for the expenses properly and actually incurred. In our view, you do not meet these conditions; therefore, the payments to the plans' administrator and attorney violate the above cited provisions of ERISA sections 406(a)(1)(B) and (D).

Our investigation also discloses that you have caused the plans to pay each of you $50 for every trustee meeting attended without regard to actual expenses. Section 4 of the Declaration of Trust provides that you shall not receive compensation out of the funds administered by you for the performance of your duties, except that you may be reimbursed for necessary and reasonable traveling expenses. In our view, your receipt of compensation from the plans, while simultaneously receiving full time pay from your respective employers and unions whose employees and members are participants in the plans, is a prohibited transaction within the meaning of ERISA section 406(a)(1)(D) (cited above) and 406(b)(1) which prohibits a plan fiduciary from dealing with plan assets in his own interest or for his own account. Furthermore, this practice violates ERISA sections 404(a)(1)(B) and (D) (cited above).

ERISA section 408(b)(2) which generally allows a plan to pay a party in interest, including a fiduciary, reasonable compensation for services rendered is not available to exempt the prohibited transactions in this case. This is because ERISA section 408(c)(2) defines the term reasonable compensation as specifically not including any compensation to a fiduciary who is already receiving full-time pay from an employer any of whose employees are participants in the plan or from an employee organization any of whose members are participants in the plan, except for the reimbursement of expenses properly and actually incurred. The total amount of these improper payments from January 1, 1975 through September 30, 1978, was $4,000. We understand that further payments have been made since then.

In addition, the fidelity bond for the six plans fails to provide coverage for eight of the ten trustees. This is a violation of ERISA section 412(a) which provides that every fiduciary of an employee benefit plan and every person who handles funds or other property of a plan shall be bonded.

In our view, for the reasons cited above, you are in violation of ERISA and will remain so until you rescind all of the prohibited transactions between the six plans and make the plans whole for any losses that have occurred or in the future may occur, as the result of those transactions; you secure documentation for attorney's fees outside the scope of the retainer agreement; and that any excessive fees paid to the plans' attorney be restored to the plans with interest; you restore to the plans with interest any amounts advanced for educational and travel expenses which were not expended; you develop guidelines whereby each party in interest who receives a travel advance submits proper documentation to account for his advance; you restore to the plans with interest all monies which you have received for attending trustee meetings; and you secure a fidelity bond which covers all of the plans' trustees.

We have provided the foregoing statement of our views to help you evaluate your obligations as a fiduciary within the meaning of ERISA. Should you fail to take the corrective action which we have suggested the matter may be referred to the Office of the Solicitor for possible suit by the Secretary. Furthermore, although only the courts and not the Department of Labor can finally decide whether a violation of ERISA has occurred, in our opinion, failure to take the above-described corrective action will cause you to remain subject to suit by other parties, including plan fiduciaries or plan participants and their beneficiaries. You should also be aware that the Secretary, pursuant to section 504(a) of ERISA, is authorized to furnish information to "any person --- actually affected by any matter which is the subject of an ERISA investigation."

If, however, you take the corrective action suggested above, the Department will take no further action in this matter, either by bringing a lawsuit or releasing information not required to be released by law in connection with the violations described above. You must understand, of course, that the Secretary's commitment to take no action will be limited to action involving violations described above and will not extend to any investigative or remedial actions relating to other violations of ERISA. You are cautioned that this office cannot guarantee that by taking the above-described remedial actions you will be in compliance with the provisions of ERISA. Accordingly, even if you take said remedial action, suit by other parties including plan fiduciaries, or participants and their beneficiaries remains possible. Neither these parties nor any other agencies of the Government (such as the Internal Revenue Service) will be bound by the Secretary's decision to take no action in this matter.

We hope this letter will be helpful to you in the execution of your fiduciary duties, and that, in respect to the specific matters discussed, you will promptly take appropriate corrective action. Please advise me, in writing, within 20 days of your receipt of this letter what action you intend to take to correct the violations described above.

Sincerely,

| AREA OFFICE | CASE NO. | SUBJECT | DISPOSITION | DATE CLOSED/REFERRED |
|---|---|---|---|---|
| NAO | 41-06628(48) | Gulfport Steamship Cos.<br>ILA Welfare Plan<br>Pascagoula - LU 1303 | VC Notice Letter | 08-14-80 |
| NAO | 41-06680(48) | Gulfport Steamship Cos.<br>GAI & Container Royalty<br>Pascagoula - LU 1303 | VC Notice Letter | 08-14-80 |
| NAO | 41-06682(48) | Pascagoula Stevedores ILA<br>Welfare Plan - Pascagoula<br>LU's 1752, 1967 | VC Notice Letter | 08-14-80 |
| NAO | 41-06683(48) | Pascagoula Stevedores ILA<br>Pension Plan - Pascagoula<br>LU's 1752, 1967 | VC Notice Letter | 08-14-80 |
| NAO | 41-06681(48) | Pascagoula/Moss Point<br>Stevedores - GAI & Container<br>Royalty Plan - Pascagoula<br>LU's 1752, 1967 | Closed | 07-24-80 |

| AREA OFFICE | CASE NO. | SUBJECT | DISPOSITION | DATE CLOSED/REFERRED |
|---|---|---|---|---|
| AAO | 40-09518(48) | Employers - ILA AFL-CIO Pension, Welfare & Vacation Wilmington LU 1426 | VC Notice Letter<br>VC Closing Letter | 11-19-79<br>03-28-80 |
| AAO | 40-09566(48) | MSSA/ILA Pension Plan Mobile LU's 1410, 1459, 1516, 1410-1 | Referred to OE<br>VC Notice Letter<br>VC Closing Letter | 07-31-79<br>03-03-80<br>04-16-80 |
| AAO | 40-09567(48) | MSSA/ILA Vacation Plan Mobile LU's 1410, 1459, 1516, 1410-1 | Referred to OE<br>VC Notice Letter<br>VC Closing Letter | 07-31-79<br>03-13-80<br>04-18-80 |
| AAO | 40-09568(48) | MSSA/ILA Welfare Plan Mobile LU's 1410, 1410-1, 1459 | Referred to OE<br>VC Notice Letter<br>VC Closing Letter | 07-31-79<br>03-13-80<br>04-18-80 |
| AAO | 40-09607(48) | MSSA/ILA LU 1985; 1410 Maintenance Pension Plan Mobile | Referred to OE<br>VC Notice Letter<br>VC Closing Letter | 07-31-79<br>03-13-80<br>04-18-80 |
| AAO | 40-07997(48) | Universal Enterprises, Inc. LU 1422-A ILA Pension Plan Charleston | Closed | 04-03-80 |
| AAO | 40-09546(48) | Savannah Maritime Assoc. - ILA Fund for Supplemental Cash Benefits - Sav. (Various Locals) | Closed | 10-25-79 |
| AAO | 40-07663(48) | Savannah ILA Employers Pension Plan Savannah LU's 1414, 1423, 1832, 1863, 1475 | Referred to OE<br>Referred to SOL | 11-01-79<br>11-08-79 |
| NAO | 41-06548(48) | Moss Point Stevedores ILA Pension Trust - Pascagoula LU's 1752, 1967 | VC Notice Letter | 08-14-80 |
| NAO | 41-06549(48) | Moss Point Stevedores ILA Welfare Trust - Pascagoula LU's 1752, 1967 | VC Notice Letter | 08-14-80 |
| NAO | 41-06627(48) | Gulfport Steamship Cos. ILA Pension Plan - Pascagoula LU 1303 | VC Notice Letter | 08-14-80 |

| AREA OFFICE | CASE NO. | SUBJECT | DISPOSITION | DATE CLOSED/REFERRED |
|---|---|---|---|---|
| MAO | 42-04618(48) | Tampa ILA Vacation Plan<br>Tampa LU's 1402, 1569, 1691 | Referred to OE<br>Referred to SOL<br>(Recommends VC) | 01-24-80<br>03-06-80 |
| MAO | 42-04735(48) | South Atlantic ILA GAI Fund<br>Jacksonville<br>LU's 1408, 1593 | Referred to OE<br>Referred to SOL | 12-20-79<br>02-14-80 |
| MAO | 42-04910(48) | SE Florida Ports ILA<br>Vacation/Holiday Fund<br>Miami - LU's 1416, 1526, 1922 | Referred to OE<br>Referred to SOL | 04-24-80<br>05-28-80 |
| MAO | 42-04913(48) | SE Florida Ports ILA<br>GAI Fund - Miami<br>LU's 1416, 1526, 1922 | Referred to OE<br>Referred to SOL | 04-03-80<br>04-24-80 |
| MAO | 42-04601(48) | ILA Local Union 1922<br>Pension Fund - Miami | VC Notice Letter<br>VC Closing Letter | 01-21-80<br>03-04-80 |
| MAO | 42-04602(48) | ILA Local Union 1922<br>Health & Welfare Fund - Miami | VC Notice Letter<br>VC Closing Letter | 01-23-80<br>03-25-80 |
| MAO | 42-04759(48) | ILA Employees Royalty Fund<br>Jacksonville LU 1408 | Closed (Not<br>Covered Plan) | 07-25-80 |
| AAO | 40-09547(48) | Savannah Maritime Assoc.<br>ILA Vacation, Welfare &<br>Holiday Funds LU's 1414, 1475 | Referred to OE<br>Referred to SOL | 10-31-79<br>11-08-79 |
| AAO | 40-09563(48) | Waterfront Employers - ILA<br>Pension Plan LU's 1422, 1771,<br>1751, 1422-A Charleston | Referred to OE<br>Referred to SOL | 11-27-79<br>03-06-80 |
| AAO | 40-09564(48) | Waterfront Employers - ILA<br>Welfare & Vacation Plans<br>Charleston - LU's 1422, 1771,<br>1751, 1422-A | Referred to OE<br>Referred to SOL | 11-27-79<br>03-06-80 |
| AAO | 40-09793(48) | Employers ILA AFL-CIO - NC<br>Pension, Welfare & Vacation<br>Wilmington LU's 1426, 1766,<br>1847, 1838, 1807 | Referred to OE<br>Referred to SOL | 05-30-80<br>07-14-80 |

## ATLANTA RO COORDINATED
## ILA INVESTIGATIONS

| AREA OFFICE | CASE NO. | SUBJECT | DISPOSITION | DATE CLOSED/REFERRED |
|---|---|---|---|---|
| MAO | 42-04596(48) | Tampa Maritime Assoc.-ILA Pension Plan - Tampa<br>LU's 1402, 1569, 1691 | Referred to OE<br>Referred to SOL | 11-09-79<br>03-06-80 |
| MAO | 42-04603(48) | Southeast Florida ILA Pension Fund - Miami<br>LU's 1416, 1526, 1922 | Referred to OE<br>Referred to SOL | 04-21-80<br>05-28-80 |
| MAO | 42-04604(48) | Southeast Florida ILA Welfare Fund - Miami<br>LU's 1416, 1526, 1922 | Referred to OE<br>Referred to SOL | 04-21-80<br>05-28-80 |
| MAO | 42-04605(48) | Jacksonville Maritime Assoc. ILA Pension Plan - Jacksonville LU's 1408, 1593 | Referred to OE<br>Referred to SOL | 11-08-79<br>11-21-79 |
| MAO | 42-04606(48) | ILA Employees Welfare Fund Jacksonville<br>LU's 1408, 1593 | Referred to OE<br>Referred to SOL | 11-08-79<br>11-21-79 |
| MAO | 42-04607(48) | ILA Vacation Plan Jacksonville<br>LU's 1408, 1593 | Referred to OE<br>Referred to SOL | 11-09-79<br>11-21-79 |
| MAO | 42-04608(48) | Jacksonville Warehousemen's Employees Assoc. Pension Plan Jacksonville LU 1408-A | Referred to OE<br>Referred to SOL | 12-20-79<br>02-14-80 |
| MAO | 42-04609(48) | ILA (Warehousemen) Welfare and Pension - Jacksonville<br>LU 1408-A | Referred to OE<br>Referred to SOL | 12-20-79<br>02-14-80 |
| MAO | 42-04610(48) | ILA (Warehousemen) Vacation Fund - Jacksonville<br>LU 1408-A | Referred to OE<br>Referred to SOL | 12-20-79<br>02-14-80 |
| MAO | 42-04617(48) | Tampa ILA Welfare Plan<br>Tampa - LU's 1402, 1569, 1691 | Referred to OE<br>Referred to SOL<br>(Recommends VC) | 01-24-80<br>03-06-80 |

The **Chairman**. Did this letter seem to you to deal appropriately with the Williams problems?

Mr. **Sexton**. Senator, we thought it could have been more specific and the area office—to simplify it, no, we wanted it done in a different way.

The **Chairman**. Well, it is my understanding that you actually felt this was a mere slap on the wrist. Isn't that true?

Mr. **Sexton**. I am not sure I would characterize it that way but I wanted to do it differently and stronger, asking them to remove Landon Williams, asking the trustees—

The **Chairman**. If we were to characterize it today, a slap on the wrist would not be a bad characterization. Is that correct?

Mr. **Sexton**. That is correct, yes.

The **Chairman**. What happened with this letter? Did you send it to Miami for review by Mr. Day?

Mr. **Sexton**. Yes, sir.

The **Chairman**. You sent it to his boss, Bud——

Mr. **Sexton**. It went direct to the area office and we had various telephone conversations about it, that they wanted to come up with a different approach.

The **Chairman**. Yes. It was my understanding that the Miami area office's recommendation was that you should go with a tougher voluntary compliance letter.

Mr. **Sexton**. Yes, that is correct, Mr. Chairman.

The **Chairman**. On February 8, 1982, Mr. Withers replied to you that "The appropriate action, in my opinion, to remedy the violations disclosed by the investigations in the above cases is to initiate immediate civil litigation. The litigation should include Landon Williams 'removal as trustee, restoration of plan losses plus interest resulting from kickbacks to Williams, and imposition of a civil penalty of 5 percent with regard to such losses from the welfare plans." Mr. Withers' letter also had an alternative or fallback position which was to ask the trustees to remove Williams. Now the latter course of action is the one that you chose. Is that not correct?

Mr. **Sexton**. Yes, sir, that is true.

The **Chairman**. We will enter the Withers letter as Sexton Document No. 6 at this point, without objection.

[Sexton Document No. 6 follows:]

Sexton Document #6

**U.S. Department of Labor**

Labor-Management Services Administration
LFAM

Reply to the Attention of: Files: 4605-4610(48)

DATE : February 8, 1982

FOR : Mr. William D. Sexton
Regional Administrator, Atlanta

FROM : B. R. Withers, Jr.
Area Administrator

SUBJECT : NOTICE LETTERS FOR JACKSONVILLE ILA LONGSHOREMENS' & WAREHOUSEMENS' PENSION, WELFARE AND VACATION/HOLIDAY PLANS (The Plans)

CASE NUMBERS: 42-4605(48) 42-4608(48)
42-4606(48) 42-4609(48)
42-4607(48) 42-4610(48)

On July 30, 1980, SOL recommended against civil action to remove Landon Williams as trustee of the above plans. Among other reasons cited for not initiating civil action at that time was because his appeal may be decided in the near future.

The appropriate action, in my opinion, to remedy the violations disclosed by the investigations in the above cases is to initiate immediate civil litigation. The litigation should include Landon Williams removal as trustee, restoration of plan losses plus interest resulting from kickbacks to Williams, and imposition of a civil penalty of 5% with regards to such losses from the welfare plans (Section 502(i). I strongly recommend again that such action be initiated without further delay.

While I realize that Williams may subsequently be removed by losing his appeals, he has remained as a trustee almost 2½ years, thus far, after conviction of crimes specified in Section 411(a).

There appears to be sufficient evidence to warrant DOL action which includes the following:

1. DOL audit of United Trailer Services, Inc. (UTS) which verified that UTS withheld $9,143.89 in contributions in the 3rd and 4th quarters of 1975. (Supplemental ROI dated 1-18-80 with summary schedule - ATTACHMENT 1).

2. Testimony of Robert F. Gillespie, President of UTS, stating that the withheld plan contributions were the agreed upon source of the kickbacks (FBI's report of interview 1-21-78 and exerpts from Gillespie's testimony 6-19-79 in 78-185 - CR-WMH, ATTACHMENTS 2 and 3).

3. Certain pages of the indictment of Williams (and others) which includes count 1 with overt acts described as receiving the kickbacks (ATTACHMENT 4, pages numbered 14, 24-para 72, and 25 para 77).

4. Copy of the criminal docket in 78-00185-CR WMH-22 which reflects Williams convictions on counts 1,2,9 and 15 (ATTACHMENT 5).

While I understand that Gillespie's testimony may have been used in the income tax evasion case (in which Williams was acquitted), it appears that it was also used in the case upon which a conviction was obtained.

The above demonstrates the quality of some of the evidence available to DOL to seek Williams removal.

In the event the decision continues to be not to litigate, the notice letter should address the above issue, placing the burden of Williams removal on the trustees.

The OE notice letter has been compared with the reports of investigation and the area office attached draft notice letter (ATTACHMENT 6) is respectfully submitted. The attached draft letter expands the language on most issues to more specifically define the amounts in issue. Summary schedules, prepared by Supervisor Day, are also attached to the proposed draft notice letter.

In addition to the expansion of language, the following summarizes the modifications (additions, deletions) made to the OE proposed notice letter:

OE's notice letter has been modified to include the issue of joint expense and earnings allocation. This issue constitutes a major reason for the under and over statement of fund balances. - page 2 OE's notice letter before last paragraph (see MAO notice letter page 3 paragraphs one and two).

The failure of the trustees to properly account for advances for their attendance at seminars and conferences has been added. - page 2 of OE's notice letter last paragraph.

An issue regarding itemized bills has been deleted since investigation has disclosed itemized bills were provided. - page 3 OE's notice letter first paragraph.

The specific amount in question has been added which will tie into schedule provided the trustees. - page 4 OE's notice letter, third paragraph. (MAO's notice letter last paragraph of page 4).

MAO's notice letter (paragraph one page 5) includes the kickback issue raised as issue H in the key case 42-4605(48). Further, the third paragraph (page 5 paragraph 2) more specifically addresses the bonding problems faced by the plans. - page 4 OE's notice letter last two paragraphs (MAO page 5 first and second paragraphs).

Rather than address all the remedies in general terms in one paragraph the draft proposed letter has been expanded to specifically address each issue and the amount involved. Through the use of detailed schedules to be attached with the letter, the trustees are presented with specific knowledge of the transactions deemed prohibited. - page 5 of EO's notice letter paragraph one.

The draft notice letter, ATTACHMENT 6, contains brackets in red for your use in readily identifying the additions/changes proposed.

It is expected that resolution of the issues raised in this notice letter will be of a major undertaking. Resolution will no doubt require additional explanation to the trustees regarding the basis for our adjustments. In the end we expect the financial statements to be restated as of FYE 9-30-78 and each year thereafter to arrive at correct fund balances for the present. The cost to the plans may be substantial and consideration should be given to holding the trustees liable for such costs. We may have required this, since the notice letter requests that the trustees make the plans whole for any losses incurred as a result of their action (inaction). Our notice letter specifically requests the trustees to follow up on the adjustments to the fund balances through to the present and we intend to monitor that activity.

Of major consequence, in our notice letter, is the Landon Williams, 406(b)(3) issue. It is proposed that Mr. Williams resign and repay the Longshoremens' plans $9,143.89 with interest. This amount represents contribution deficiencies for the third and fourth quarters of 1975. United Trailer Services, Inc. was required to contribute at $2.63½ per hour for 7-1-75 through 9-30-75 and at $2.90½ per hour for 10-1-75 through 9-30-76. These amounts, per the agreement, were reduced by .42½ and .47½ respectively because United Trailer Services, Inc. paid its holiday benefits from corporate assets. Since the contribution deficiencies represent Welfare, Vacation, Administration and Pension deficiencies it would appear that a civil penalty of 5% could be assessed against Williams for the Welfare fund deficiencies should he fail to voluntarily make restitution of the contributions lost by the plans.

The **Chairman**. In a February 25, 1982, letter to Mr. Alan Lebowitz, you stated that "It seems intolerable that a trustee convicted of kickbacks could remain on the job without some action being taken. Although it may be without precedent, we agree in essence with the area office that the board of trustees should be compelled to justify Williams' continuation as a trustee and/or to show evidence that proper safeguards have been established to ensure that present or future trustees are not allowed the opportunity to repeat similar conduct." That is true, isn't it?

Mr. **Sexton**. That is true, yes, sir. We felt strongly about it.

The **Chairman**. I agree wholeheartedly with your arguments about the danger posed by the lack of safeguards but if you felt so strongly, Mr. Sexton, why didn't you place greater emphasis on the Miami office's preferred course of action, which was immediate litigation to remove Williams from his office?

Mr. **Sexton**. Basically, I suppose, at this point to try to explain why I thought so at the time, I thought that we had made an attempt and the Solicitor's Office said no, at the time they did not think it was appropriate, that it would not hurt anything and it could possibly get him removed by asking the trustees, although I did not really expect them to but it was possible. If they did not, then we could again go forward in a relatively short period of time recommending litigation.

The **Chairman**. As I understand it, basically you felt that since the Solicitor's Office was adamantly opposed to going ahead the way you had recommended, that you did the best you could do under the circumstances. Would that be a fair characterization?

Mr. **Sexton**. Well, they had said no one time and I thought the possibility existed that we might get him out this way but if we did not, we could go back with a recommendation again, yes.

The **Chairman**. Let me put into the record at this point the Sexton Document No. 7, which is the memorandum for Alan D. Lebowitz from William D. Sexton, regional administrator.

[Sexton Document No. 7 follows:]

1371 Peachtree Street, NE
Room 300
Atlanta, Georgia 30367

LFA

February 25, 1982

MEMORANDUM FOR: Alan D. Lebowitz, Acting Assistant
Administrator for Enforcement/PWBP

FROM: William D. Sexton
Regional Administrator

SUBJECT: Jacksonville ILA Longshoremens' and
Warehousemens' Pension, Welfare and
Vacation/Holiday Plans
Case Nos. 42-04605(48), 42-04606(48)
42-04607(48), 42-04608(48)
42-04609(48), 42-04610(48)

Attached is a memorandum dated February 8, 1982 with attachments numbered 1 through 6 from the Miami Area Office. This package is in response to an OE memorandum with proposed notice letter dated October 8, 1981. The Miami Area Office did an exhaustive review of the Report of Investigation, SOL Opinion, and OE proposed notice letter. Attachment No. 6 is Miami Area Office's revised proposed draft notice letter which they suggest be sent to the Board of Trustees. In general, the suggested changes provide more specificity and actually define and compute the amounts at issue. Six schedules were prepared and suggested that they be attached to the revised proposed notice letter.

The most substantive departure from the OE proposed notice letter involves the Area Office's attempt to cause the Board of Trustees to see that Landon Williams (Williams) is removed because of his activities leading to his criminal conviction (see pages 5, 10, and 11 of Miami Area Office revised proposed notice letter). Such attempt is sought by the Area Office only if SOL does not wish to initiate immediate litigation to remove Williams and correct the other civil violations.

We understand SOL's rationale for recommending against civil action on July 3, 1980 to remove Williams as Trustee of Subject Plan, and we are aware that Williams has not, as yet, exhausted all of his appeals. We are also aware of pending legislation which, if enacted, would place stronger constraints on someone convicted of certain crimes who continues to hold office or who continues to occupy a position of trust with respect to employee benefit plans. However, in the instant case, it seems intolerable that a Trustee convicted of kickbacks could remain "on-the-job" without some action being taken. Although it may be without precedent, we agree, in essence, with the Area Office that the Board of Trustees should be compelled to justify Williams' continuation as Trustee and/or to show evidence that proper safeguards have been established to ensure that Williams and present or future Trustees are not allowed the opportunity to repeat similar conducts.

We agree with the other Area Office recommended changes in the revised proposed notice letter, as well.

The **Chairman**. On March 1, 1982, a voluntary compliance letter went out to the trustees implementing the Office of Enforcement's new position. Among other improvements in the Lebowitz draft letter of October 1981 which has been properly requested by the Miami area office, were the proposal that the trustees force Williams to resign and that Williams pay back the $9,183 plus interest.

Mr. **Sexton**. Yes, sir, that is correct.

The **Chairman**. The $9,183, of course, was the amount of United Trailer Services contributions that had been understated in order to finance the bribe for Mr. Williams. What was the trustees' response to your letter?

Mr. **Sexton**. They said that Mr. Williams was elected by the local union to serve on this and that they could not remove him.

The **Chairman**. And that he really had done nothing wrong, didn't they say that?

Mr. **Sexton**. That he said he refused to resign, saying that he had done nothing wrong.

The **Chairman**. We will enter the voluntary compliance letter into the record as Sexton Document No. 8 and the trustees' letter as Sexton Document No. 9, without objection, at this point.

[Sexton Documents Nos. 8 and 9 follow:]

Sexton #8

U.S. Department of Labor

Labor-Management Services Administration
111 N. W. 183rd Street
Miami, Florida 33169
Telephone: 305-350-4611

Reply to the Attention of: JDay:bg

March 1, 1982

Re: Case Nos: 4605-4610

Board of Trustees
Jacksonville ILA Longshoremen's and Warehousemen's
Pension, Welfare and Vacation/Holiday Plans
1336 Haines Street
Jacksonville, Florida 32206

Dear Sirs:

The Department of Labor has responsibility for the administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans like the Jacksonville ILA Longshoremen's Pension, Welfare and Vacation/Holiday Plans (the Longshoremen's Plans) and the Jacksonville ILA Warehousemen's Pension, Welfare and Vacation/Holiday Plans (the Warehousemen's Plans).

This Office has concluded its investigation of the Longshoremen's Plans and the Warehousemen's Plans and of your activities as their trustees after January 1, 1975. Based on the facts gathered during this investigation, and subject to the possibility that additional information may lead us to revise our views, it appears that as trustees you may have breached your fiduciary obligations to the Longshoremen's Plans and the Warehousemen's Plans and may have violated several provisions of ERISA. The purpose of this letter is to advise you of our findings and to give you an opportunity to comment before the Department determines what, if any, action to take.

As we understand the facts, each plan is funded entirely by employer contributions made pursuant to local collective bargaining agreements (CBAs). The CBAs, however, do not specify the amount of contributions for each plan; they simply require the employers to make a lump-sum contribution for each hour worked by covered employees. The contributions are placed in an escrow account and each year you decide how the lump-sum employer contributions will be allocated to the Longshoremen's Plans and the Warehousemen's Plans and to an administrative fund from which all expenses for the plans are paid.

The hourly rate for employer contributions has been increased as of October 1st in each year since 1974. You, however, have made your allocation decisions each year after the new contribution rates became effective.

The investigation disclosed that you have transferred funds from one plan to another and have not distributed employer contributions to the plans in accordance with your own allocation formula. Section 5 of the Declaration of Trust provides that "The Trustees shall have full power and authority to apportion and allot (and in their discretion to change the apportionment and allotment) to each plan a proportion of the Employer's total contribution, but contributions once received, allotted and dedicated to a particular plan shall not thereafter be changed or transferred to another plan."

You serve as trustees for both the Longshoremen's Plans and the Warehousemen's Plans. The plans have different classes of beneficiaries, different standards of eligibility for the receipt of benefits, and different levels of benefit payments. Therefore, the plans, when involved in the same transaction, have adverse interests that cannot simultaneously be represented by the same trustees. Accordingly, you have violated ERISA Section 406(b)(2) by transferring funds between the plans with the result that the plans became indebted to each other. ERISA Section 406(b)(2) provides that a fiduciary with respect to a plan shall not in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

Morever, it is unlawful under ERISA Section 406(b)(2) for the same individuals who serve as trustees for these separate plans that are funded jointly through lump-sum employer contributions to decide how those contributions will be allocated to each plan.

It also appears that you have violated the plan documents in transferring funds between the plans. Since you transferred employer contributions from one plan to another after you had allocated them to particular plans, you failed to follow Section 5 of the Declaration of Trust. In our view, this is a violation of ERISA Section 404(a)(1)(D) which provides that:

> (a)(1) ... a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ---
>
> (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

Our investigation disclosed that you failed to properly allocate joint expenses and joint investment earnings among the plans. This inaction has caused the fund balances of each of the Longshoremens' and Warehousemens' plans to be misstated. Your failure to assure proper allocation is in violation of Act Section 406(b)(2).

The investigation also disclosed that you have failed to require a proper accounting of attorneys fees and travel and education expenses incurred by the plans' administrator and plans' attorney. Further, that you as Trustees have failed to properly account for advances for your attendance at seminars and conferences.

The investigation disclosed that the plans' attorney, Clark Toole, receives an annual retainer. Mr. Toole's annual retainer beginning January 1, 1975 was $7,500 and was increased to $10,000 on January 1, 1978. The plans have also paid Mr. Toole fees that he deemed to be outside the scope of his retainer agreement without determining the reasonableness of the fees.

ERISA Section 404(a)(1), which generally became effective January 1, 1975, sets forth a standard of behavior governing the exercise by fiduciaries of their duties with respect to the plan. As fiduciaries of the Longshoremens' and Warehousemens' Plans, subject to ERISA, you are required to meet that standard, as follows:

> ... a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ---
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan;
>
> (B) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;...

In our view, you have violated your fiduciary duties imposed by ERISA Sections 404(a)(1)(A) and (B) by not requiring documentation of attorneys' fees outside the scope of the retainer agreement and by not requiring a proper accounting of travel and education expenses incurred by the plans' administrator and attorney. Furthermore, your failure to require a proper accounting of travel expenses is a violation of ERISA Section 406(a)(1)(B) which prohibits the lending of money or other extension of credit between a plan and a party in interest and ERISA Section 406(a)(1)(D) which prohibits the use by, or for the benefit of, a party in interest of any assets of the plan.

However, ERISA Section 408(c)(2) provides that nothing in ERISA Section 406 shall be construed to prohibit the reimbursement by a plan of expenses properly and actually incurred by a fiduciary in the performance of his duties with the plan. Department of Labor Regulation Section 2509.75-6 further clarifies the exemptive provisions of Section 408(c)(2). According to the regulation, a plan may make an advance to a fiduciary or other party in interest to cover direct expenses to be properly and actually incurred by the fiduciary in the performance of his duties if the amount of the advance is reasonable with respect to the amount of the direct expenses likely to be properly and actually incurred and if the fiduciary accounts to the plan at the end of the period covered by the advance for the expenses properly and actually incurred. In our view, you do not meet these conditions; therefore, the payments to the plans' administrator, attorney and yourselves violate the above cited provisions of ERISA Sections 406(a)(1)(B) and (D).

Our investigation also disclosed that you have caused the plans to pay each of you $50 for every trustee meeting attended without regard to actual expenses. Section 4 of the Declaration of Trust provides that you shall not receive compensation out of the funds administered by you for the performance of your duties, except that you may be reimbursed for necessary and reasonable traveling expenses. In our view, your receipt of compensation from the plans, while simultaneously receiving full time pay from your respective employers and unions whose employees and members are participants in the plans, is a prohibited transaction within the meaning of ERISA Section 406(a)(1)(D) (cited above) and 406(b)(1) which prohibits a plan fiduciary from dealing with plan assets in his own interest or for his own account. Furthermore, this practice violates ERISA Sections 404(a)(1)(B) and (D) (cited above).

ERISA Section 408(b)(2) which generally allows a plan to pay a party in interest, including a fiduciary, reasonable compensation for services rendered is not available to exempt the prohibited transactions in this case. This is because ERISA Section 408(c)(2) defines the term reasonable compensation as specifically not including any compensation to a fiduciary who is already receiving full-time pay from an employer any of whose employees are participants in the plan or from an employee organization any of whose members are participants in the plan, except for the reimbursement of expenses properly and actually incurred. The total amount of these improper payments from January 1, 1975 through September 30, 1978, was $4,185.10. We understand that further payments have been made since then.

Our investigation disclosed that Landon L. Williams, employee co-chairman of the Longshoremens' Pension, Welfare and Vacation-Holiday Funds; the Warehousemens' Pension, Welfare and Vacation-Holiday Funds allowed, for consideration for his own account, United Trailer Services, Inc., a participating employer, to contribute less than the proper amount of contributions due to the Longshoremens' Pension, Welfare and Vacation-Holiday Funds. Mr. Williams is in violation of ERISA Section 406(b)(1)(3) which is as follows:

> (b) A fiduciary with respect to a plan shall not -
>
> > (3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

In addition, the fidelity bond failed to meet the requirements of ERISA Act Section 412 and the regulations thereunder. The bond was insufficient in that it did not permit recovery by the various plans of amounts equal to that which would be required if the funds were bonded separately. Further, the bond does not have a pay-over rider. The bond currently in effect at the time of our investigation did not clearly provide coverage for the Warehousemens' plans. The named insured was the ILA Employees' Pension Welfare and Vacation Funds.

In our view, for the reasons cited above, you are in violation of ERISA and will remain so until you rescind all of the prohibited transactions between the six plans and make the plans whole for any losses that have occurred or in the future may occur, as the result of those transactions. Those transactions and losses are as follows:

Longshoremens' Pension Fund

For fiscal years ended 9-30-75 through 9-30-78, there were $143,194.11 in excess transfers of employer contributions to the Longshoremens' Pension Fund. As a result of the excess transfers, unabsorbed expenses, unallocated income and miscellaneous benefits paid the Longshore Pension Plan's Fund balance is overstated by $162,674.81 as of 9-30-78.

Total amount of employer contributions that should have been transferred to the Longshoremens' Pension Fund for fiscal years ended 9-30-75, 9-30-76, 9-30-77 and 9-30-78 was $3,989,475.62. The Longshoremens' Pension Fund had $154,685.90 in the Longshoremens' Escrow Account as of 9-30-74. These amounts total to $4,144,161.52.

The actual transfer of funds from the Longshoremens' escrow and from other sources for this period was actually $4,259,440.23 and $27,915.40 respectively. These amounts total $4,287,355.63.

The total actually transferred less the amount of employer contributions that should have been transferred results in $143,194.11 of excess transfers computed as follows

| | |
|---|---|
| Total Due | $4,144,161.52 |
| Total Transferred | 4,287,355.63 |
| Excess Transfers | ($ 143,194.11) |

All expenses were paid out of the Longshore Welfare Operating Account.

As a result of the trustees failure to properly allocate joint income and joint expenses, the Longshore Pension Fund balance as of September 30, 1978 was overstated by $162,674.81. This amount was arrived at as follows:

During the period October 1, 1974 to September 30, 1978 there were $548,555.79 allocated for joint administrative expenses for the Longshore plans and $38,044.82 for the Warehouse plans providing a total of $586,600.61 for joint expenses. Over this same period the total of Longshore and Warehouse expenses were $1,047,082.71. The expenses in excess of the amounts allocated for joint expenses, $460,482.10 were not charged back to the individual plans.

The actual Longshore Pension share allocation of expenses was $232,855.22 for this period. The Longshore Pension share of these joint expenses should have been $397,179.28. The Longshore Pension Fund failed to absorb $164,324.06 of its equitable share of joint expenses ($397,179.28-$232,855.22).

The trustees did not allocate residual income (ie earnings on investments) to the plans having an equitable interest in the investments. The residual earnings for the period October 1, 1974 to September 30, 1978 were $492,525.12. The Longshore Pension equitable share of this income during this period was ($743.05).

The total miscellaneous benefits paid from the Longshore Welfare Operating Account on behalf of the Longshore Pension Fund was $2,392.30.

In summary, the unabsorbed expenses plus unallocated income less miscellaneous benefits paid is $162,674.81. This is the composition of the overstatement of the Longshore Pension Plan's Fund balance as of September 30, 1978.

Longshoremens' Welfare Fund

As a result of the Trustees failure to properly allocate and then distribute employer contributions; and to equitably distribute income and expenses the Longshore Welfare Fund's fund balance as of September 30, 1978 was overstated by $606,643.31. The overstatement was arrived at as follows:

The Vacation-Holiday Fund Balance was kept at $1,000 at the end of each fiscal year to avoid possible tax consequences. The actual fund balance at September 30, 1974 should have been $1,000 plus the Vacation-Holiday Fund's share of contributions received during the FYE September 30, 1974. Thus, the balance should have been $610,827.30 computed based on $2,327,109.25 in employer contributions for fiscal year ended September 30, 1974. The benefits relating to this $610,827.30 were paid out in

December of 1974 and July of 1975. Thus an adjustment to the Longshore Welfare Fund, fund balance was made in the amount of $610,827.30 to reduce the Longshore Fund balance for the proper funding of the Longshore Vacation-Holiday fund.

During the October 1, 1975 and September 30, 1978 period the Longshore Welfare Fund received employer contributions in excess of the amount allocated by the trustees in the amount of $584,259.00. This adjustment to fund balance represents the difference between actual transfers of employer contributions and the amount the trustees set forth in the minutes as the Welfare allocations.

An adjustment of $112,814.35 is necessary to reflect the excess of residual earnings that were attributed to the Longshore Welfare Fund in error. The residual earnings not directly associated with a specific plan have been redistributed to reflect equity.

An adjustment of ($701,257.34) is necessary to reflect the excess expenses charged to the Longshore Welfare Fund.

In summary, the combination of adjusting the Longshore Welfare Fund's balance to reflect the funding of the September 30, 1974 Vacation-Holiday benefits payable in FYE September 30, 1975, $610,827.30; adjusting fund balance to reflect the net excess of trustee allocated employer contributions over those actually transferred, $584,259.00; adjusting the Fund balance to reflect the excess residual earnings attributed to Longshore Welfare Fund, $112,814.25; and adjusting the allocation of excess joint administrative expenses, $701,257.34 makes up the balance of the over statement of the Longshore Welfare Fund's fund balance of $606,643.31.

The Financial Reports of the Longshore Welfare Fund as of September 30, 1978 showed the following receivables and payables from and to other Plans:

DUE FROM OTHER FUNDS

| | |
|---|---|
| Warehousemens' Welfare | $248,012.86 |
| Longshoremens' Pension | 143,194.11 |
| Royalty 1st and 3rd | 64,910.79 |
| Longshoremens' Vacation | 302.72 |
| | $456,420.48 |

DUE TO OTHER FUNDS

| | |
|---|---|
| Royalty 1st and 3rd | $180,137.06 |
| Warehousemens' Vacation | 2,766.30 |
| | $182,903.36 |

The above balances are the end result of numerous transactions between plans. Refer to attached SCHEDULE #1 for complete list of transactions composing the above balances.

### Longshoremens' Vacation-Holiday Funds

As a result of the trustees failure to properly allocate and then distribute employer contributions; and to equitably distribute income and expenses, the Longshoremens' Vacation-Holiday Fund's fund balance as of September 30, 1978 was understated by $863,049.13.

This understatement was arrived at by adjusting the fund balance for FYE 9-30-75 through 9-30-78 and is reflected in SCHEDULE #2 which is attached to this letter.

### Warehousemens' Pension Fund

As a result of the trustees failure to properly allocate and then distribute employer contributions ($42,886.73); and to equitably distribute income and expenses ($28,927.71), the Warehousemens' Pension Fund balance as of September 30, 1978 was overstated by $71,814.44.

The FYE September 30, 1974 Financial Statements indicate that the Warehouse Pension Fund owed the Warehouse Welfare Fund $36,740.58. During the FYE September 30, 1975, the trustees allocated $69,824.45 in employer contributions to the Warehouse Pension Plan. During the same period $82,192.46 in employer contributions were transferred from the Warehouse Escrow Account to the Warehouse Pension account with C&S Bank of Atlanta. Therefore, the transfers exceeded the allocations by $12,368.01. As a result, the Warehouse Pension should have shown a "due to" Warehouse Escrow for the above $12,368.01. However, per the Financial Statements for September 30, 1975, the CPA allocated $112,856.71 in employer contributions to the Warehouse Pension Plan. The difference between the amount transferred ($82,192.64) and the amount shown on the Financial Statements ($112,856.81) of $30,664.25 was used to reduce the amount owed the Warehouse Welfare Fund by the Warehouse Pension Plan ($36,740.58) to $6,076.33. Therefore, instead of reporting a total liability to other Funds of $49,108.59 ($36,740.58 plus $12,368.01), the Warehouse Pension reported only a $6,076.33 liability to the Warehouse Welfare for the period ended September 30, 1975.

The above type transactions continued through the period under investigation to FYE September 30, 1978. SCHEDULE #3, attached continues with the above transactions to arrive at fund balance adjustments for fiscal period ended September 30, 1978.

### Warehousemens' Welfare Fund

The Warehouse Welfare Fund balance was understated, as of September 30, 1978 by $42,886.73. This is a combination of the $20,490.38 shown on the financial statements as owed by the Warehouse Welfare Fund to the Warehouse Pension Fund. However, investigation indicates the Warehouse Pension actually owes the Warehouse Welfare Fund $22,396.35.

The Financial Statements of the Warehouse Welfare Fund as of September 30, 1978 showed the following receivables and payables from and to the other plans:

DUE FROM OTHER FUNDS

| | |
|---|---|
| Warehousemens' Vacation Fund | $2,561.97 |

DUE TO OTHER FUNDS

| | |
|---|---|
| Warehousemens' Pension Fund | $20,490.38 |
| Longshoremens' Welfare Fund | 248,012.86 |
| Royalty Fund | 4,956.16 |
| | $273,459.40 |

The above balances are the end result of numerous transactions between plans. Refer to attached SCHEDULE #4 for complete list of transactions composing the above balances.

Warehousemens' Vacation-Holiday Fund

The Warehouse Vacation-Holiday Fund received $70,555.55 less than it should have because of a deficiency of employer contributions being transferred. As a result of the above deficiency and other adjustments, the fund balance of the Warehouse Vacation Fund was understated as of September 30, 1978 by $39,937.67.

The above deficiency and understatement is more specifically detailed in the attached SCHEDULE #5.

In our view the trustees should review their retainer agreement with the plans' attorney to insure the retainer fee is reasonable. The attorney's retainer was increased from $3,000 to $7,500 effective January 1, 1975 and to $10,000 effective January 1, 1978.

The trustees should review all advances to the funds attorney and administrator to insure both the reasonableness of amounts expended and that the advances have been properly accounted for as provided for in Department of Labor Regulation Section 2509.75-6.

During the period October 1, 1974 to September 30, 1978, Mr. Toole, Attorney for the plans received the following:

| | TOTAL | FYE 9-30-75 | FYE 9-30-76 | FYE 9-30-77 | FYE 9-30-78 |
|---|---|---|---|---|---|
| Retainer | $27,125.00 | $5,250.00 | $7,500.00 | $5,625 | $8,750.00 |
| Prof. Services | 5,117.74 | - | - | 750 | 4,367.14 |
| Travel Expenses | 7,790.20 | 890.73 | 1,791.47 | 3,778 | 1,330.00 |
| Dues | 825.00 | 200.00 | 200.00 | 200 | 225.00 |
| Registration fees | 1,365.00 | 165.00 | 180.00 | 570 | 450.00 |
| Rm. deposits | 430.00 | 42.00 | 42.00 | 204 | 142.00 |
| TOTAL | $42,652.94 | | | | |

The trustees should restore to the Plans with interest any amounts advanced for expenses of travel and seminars which were not proper or properly accounted for and develop guidelines whereby each party in interest who receives a travel advance submits proper documentation to account for his advance.

The amounts advanced for each fiscal period are listed in the attached SCHEDULE #6.

In our view the compensation received by the trustees should be returned to the plan with interest. The payments totaling $4,185.10 are as follows:

| | 1-1-75 to 9-30-75 | FYE 9-30-76 | FYE 9-30-77 | FYE 9-30-78 | TOTAL |
|---|---|---|---|---|---|
| Williams | $250.00 | $250.00 | $150.00 | $50.00 | $700.00 |
| Rodgers | 250.00 | 250.00 | 150.00 | 100.00 | 750.00 |
| Anderson | 200.00 | 150.00 | - | - | 350.00 |
| Stark | 250.00 | 200.00 | 150.00 | 150.00 | 750.00 |
| Fox | 250.00 | 150.00 | 100.00 | 50.00 | 550.00 |
| Kaufman | 250.00 | 250.00 | 150.00 | 50.00 | 700.00 |
| King | - | 100.00 | 100.00 | - | 200.00 |
| Land | - | - | - | 79.20 | 79.20 |
| Jones | - | - | - | 105.90 | 105.90 |
| | $1,450.00 | $1,350.00 | $800.00 | $585.10 | $4,185.10 |

The trustees should secure proper bonding coverage for all plans and assure the bond is in amount as specified in Section 412 of ERISA. Further, the bond should cover every person who handles funds and provide for appropriate payover riders if more than one plan is covered by the bond.

In our view, Mr. Landon L. Williams, employee co-chairman has allowed, for consideration, United Trailer Services, Inc. (UTS) a participating employer to contribute less than the proper amount of contributions due to the Longshoremens' Pension, Welfare and Vacation-Holiday Funds.

Our review of UTS records reveals that UTS failed to pay Pension, Welfare and Vacation-Holiday contributions of $9,143.89 in the third and fourth quarters of 1975. Further, that Mr. Williams agreed to this underpayment of contributions so that monies could be generated to pay Mr. Williams for labor peace.

Mr. Williams should repay the $9,143.89 with interest to the plans and resign.

Further, the remaining trustees should forthwith take appropriate action to remove Landon Williams should he fail to resign.

We have provided the foregoing statement of our views to help you evaluate your obligations as fiduciaries within the meaning of ERISA. While these corrective actions address specifically the period from January 1, 1975 through September 30, 1978, it is intended and prudency demands that you take steps necessary to follow the corrective course of action to the present.

In our view the trustees violate ERISA each time they allocate employer contributions. To remedy this situation, a possible solution could be that the lump-sum employer contributions be allocated during the collective bargaining process. To do otherwise, causes the trustees to make allocation decisions adverse to the interest of a given plan and its participants.

Should you fail to take the corrective action which we have suggested the matter may be referred to the Office of the Solicitor for possible suit by the Secretary. Furthermore, although only the courts and not the Department of Labor can finally decide whether a violation of ERISA has occurred, in our opinion, failure to take the above-described corrective action will cause you to remain subject to suit by other parties, including plan fiduciaries or plan participants and their beneficiaries. You should also be aware that the Secretary, pursuant to Section 504(a) of ERISA, is authorized to furnish information to "any person --- actually affected by any matter which is the subject of an ERISA investigation."

If, however, you take the corrective action suggested above, the Department will take no further action in this matter, either by bringing a lawsuit or releasing information not required to be released by law in connection with the violations described above. You must understand, of course, that the Secretary's commitment to take no action will be limited to action involving violations described above and will not extend to any investigative or remedial actions relating to other violations of ERISA. You are cautioned that this Office cannot guarantee that by taking the above-described remedial actions you will be in compliance with the provisions of ERISA. Accordingly, even if you take said remedial action, suit by other parties including plan fiduciaries, or participants and their beneficiaries remains possible. Neither these parties nor any other agencies of the Government (such as the Internal Revenue Service) will be bound by the Secretary's decision to take no action in this matter.

We hope this letter will be helpful to you in the execution of your fiduciary duties, and that, in respect to the specific matters discussed, you will promptly take appropriate corrective action. Please advise me, in writing, within 20 days of your receipt of this letter what action you intend to take to correct the violations described above.

Sincerely yours,

B. R. Withers, Jr.
Area Administrator

1✓ Sexton #9

TOOLE, TAYLOR, MOSELEY & JOYNER
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LOUIS KURZ
[illegible]

904/356-1306
CABLE ADDRESS "[illegible]"
TELEX [illegible]

March 19, 1982

Our File: 77198/CWT

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. B. R. Withers, Jr.
Area Administrator
U. S. Department of Labor
111 N. W. 183rd Street
Miami, Florida 33169

Re: Jacksonville ILA Longshoremens' and Warehousemens' Pension Welfare and Vacation/Holiday Plans
Case Nos. 4605-4610

Dear Mr. Withers:

Please be advised that a meeting of the trustees of International Longshoremens' Welfare and Pension Funds was held this morning, at which time Mr. Ronnie Bell, Administrator, related to the trustees the substance of his recent telephone conversation with you concerning the above case. Mr. Bell informed the trustees that your office was agreeable to a twenty day extension of the time period set out in your letter of March 1, 1982, for a written reply by the trustees. Mr. Bell further advised the trustees that this extension was applicable to all portions of the report contained in said letter, except the portion dealing with Mr. Landon Williams and United Trailer Service Inc.

This particular matter was discussed by the trustees and they requested that I inform you as follows:

1. The trustees have no records or evidence which reveal or even indicate that Mr. Williams agreed to any underpayment of contributions. The trustees are advised, however, that the substance of this charge was presented to a criminal jury in Jacksonville, Florida, in January of 1980, and Mr. Williams was acquitted.

2. With regard to removing Mr. Williams as trustee, the trustees would call your attention to the fact that Mr. Williams is elected by the members of Local 1408, who are the beneficiaries of the trusts and Mr. Williams as a Union representative cannot be removed by the trustees.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. B. R. Withers, Jr.
Page Two
March 19, 1972

3. Mr. Williams has informed the trustees that he has no intention of resigning, inasmuch as he has committed no wrongdoing.

If you have any further advice concerning this matter, we would be happy to hear from you.

With regard to other items, i.e. travel expenses, etc., the trustees have requested that I advise you that in many cases vouchers and other supporting documents were submitted by the trustees to the prior Administrator. These documents, however, have been subpoenaed or examined by the F.B.I., Internal Revenue Service, and Department of Labor at various times, and if you do not have copies of the same, it will be necessary for the trustees to reconstruct these expense accounts. Needless to say, this will not be possible within twenty (20) days. Please be advised that we will proceed as quickly as possible to supply you with the information that we obtain, and we hope the information will be available, at least in part during the twenty (20) day period.

Very truly yours,

TOOLE, TAYLOR, MOSELEY & JOYNER

By Clark W. Toole Jr.
Clark W. Toole, Jr.

CWTjr/se

cc: Mr. Ronnie A. Bell, Administrator
Mr. James E. Cushion, Accounting Mgr. & Pension Officer
Mr. Landon L. Williams, Trustee
Mr. J. A. Kaufmann, Jr., Trustee
Mr. Robert B. Keith, Trustee
Mr. Ray L. King, Trustee
Mr. Gerard B. Fox, Trustee
Mr. Lewis W. Jones, Trustee
Mr. Ralph J. Hochman, CPA

The **Chairman**. Did you really ever expect the trustees to remove Williams? You indicated earlier you really did not.

Mr. **Sexton**. Not really, no, sir, but I thought anything was worth an effort.

The **Chairman**. Don't you think that is an awful situation, really?

Mr. **Sexton**. I beg your pardon, sir. I did not hear you.

The **Chairman**. Don't you think that is an awful situation, really, for the——

Mr. **Sexton**. Oh, yes, sir, I do, for a convicted felon to remain in a union office or a plan office——

The **Chairman**. Over the trust funds.

Mr. **Sexton**. I would be most happy if your bill that you were discussing earlier with Mr. Ryan is passed so that upon conviction they could be immediately removed. It would make my job much easier.

The **Chairman**. What did you recommend after the trustees responded in this manner?

Mr. **Sexton**. After the trustees responded?

The **Chairman**. In the manner that they did.

Mr. **Sexton**. Yes, I expected it pretty much.

The **Chairman**. However, I say, didn't you recommend immediate litigation to remove Williams?

Mr. **Sexton**. Oh, yes, sir, as soon as we got the response.

The **Chairman**. We will enter the Withers letter as Sexton Document No. 10 and your letter as Sexton Document No. 11 at this point, without objection.

[Sexton Documents Nos. 10 and 11 follow:]

111 N. W. 183rd Str.
Miami, FL 33169

LFAM

Sexton #10

DATE : March 25, 1982

MEMORANDUM FOR: Mr. William D. Sexton
Regional Administrator

THROUGH : Mr. Shannon Davis,
Assistant Regional Administrator/PWBP

SUBJECT : JACKSONVILLE ILA LONGSHOREMENS' & WAREHOUSEMENS' PENSION, WELFARE, AND VACATION/HOLIDAY PLANS (THE PLANS)
CASE NUMBERS: 42-04605(48) 42-04608(48)
42-04606(48) 42-04609(48)
42-04607(48) 42-04610(48)

This is to recommend immediate civil litigation to correct the violations regarding Landon Williams as identified in our Notice Letter dated March 1, 1982 and received by the Plan Administrator on March 3, 1982, a copy of which is attached. Also attached is a letter received March 25, 1982 from the trustees.

Regarding Trustee Landon Williams, it is requested that the litigation include injunctive relief to enjoin Williams from serving in any fiduciary capacity in relationship to any ERISA covered plans, including the GAI Fund.

In addition, to be considered separately from the litigation, it is further recommended that a civil penalty, pursuant to Section 502(1) of ERISA, be assessed against Williams with regard to that portion of the $9,143.89 requested restitution relating to the welfare funds.

The following represents contacts with the Plans subsequent to the issuance of the Notice Letter:

On March 11, 1982 the Miami AO received a letter dated March 9, 1982, copy attached, from Mr. Ronnie A. Bell, Administrator for the Plans. In his letter Mr. Bell acknowledges receipt of the Notice Letter; advised that the trustees have been provided with a copy of the Notice Letter and a trustee meeting called; and requested an explanation as to what documentation would be required to support each of the trustee expense advances contained in Schedule 6, pages 1 and 2 of the Notice Letter. By letter dated March 15, 1982, copy attached, the Miami AO suggested a list of items which would be indicative of a proper accounting for trustee expenses.

On March 18, 1982, Mr. Bell telephonically contacted SI Jesse Day, Miami AO and requested a twenty day extension, copy of memorandum to file attached. Mr. Bell was advised that an extension would be granted upon the receipt of a written request, however, the extension would not apply to page 11, paragraphs 2 and 3 of the Notice Letter concerning Landon Williams' resignation, requested restitution or forthwith action by other trustees to remove Williams.

Investigator Robert Passero discussed the matter today with Plans' Attorney Toole, copy of his memorandum to file is also attached.

B. R. WITHERS, JR.
AREA ADMINISTRATOR

Attachments: A/S

Sexton # 11

U.S. Department of Labor

Labor-Management Services Administration
1371 Peachtree Street, NE
Room 300
Atlanta, Georgia 30367
Reply to the Attention of: LPA

March 26, 1982

MEMORANDUM FOR: Mervyn A. Schwedt, Acting Assistant
Administrator for Enforcement/PWBP

FROM: William D. Sexton
Regional Administrator

SUBJECT: Jacksonville ILA Longshoremens' and Warehousemens'
Pension, Welfare and Vacation/Holiday Plans
Jacksonville, Florida
Case Nos: 42-04605(48) 42-04608(48)
42-04606(48) 42-04609(48)
42-04607(48) 42-04610(48)

By memorandum dated October 8, 1981, OE suggested that the Miami Area Office seek voluntary compliance concerning the violations disclosed by the investigation of Subject Plans. A proposed notice letter had been drafted and was attached to the memorandum. The Miami Area Office did an exhaustive review of the Report of Investigation, SOL opinion, and OE proposed notice letter. As a result of this review, the Area Office submitted by memorandum dated February 8, 1982, a revised proposed notice letter for consideration. Generally, this revision provided more specificity. The most substantive departure from the OE proposed notice letter involved the Area Office's attempt to cause the Board of Trustees to see that Trustee Landon Williams was removed. By memorandum dated February 25, 1982, the Regional Office supported the changes and concurred that the revised proposed notice letter be sent to the Trustees. We were advised by OE telephonically on March 1, 1982 (confirmed in writing on March 8, 1982) that they concurred with the changes made by the Miami Area Office and recommended that the revised letter be sent to the Trustees. OE further advised that if the Trustees fail to take corrective action, the cases should be returned to OE for consideration for referral for litigation.

Attached is a memorandum with attachments dated March 25, 1982 from the Miami Area Office which recommends immediate civil litigation to correct the violations regarding Landon Williams. Specifically, they request injunctive relief to enjoin Williams from serving in any fiduciary capacity with respect to ERISA covered plans, and further, they seek that a civil penalty (Act Section 502(i)) be assessed against Williams with regard to that portion of the $9,143.89 requested restitution relating to the Welfare Funds.

On March 18, 1982, the Trustees requested a 20-day extension of the notice letter period of time within which to respond; the Area Office approved the extension, with exception of Page 11, Paragraphs 2 and 3 of the notice letter dealing with Landon Williams' resignation, requested restitution or forthwith action by other Trustees to remove Williams. On March 25, 1982, the Plan Attorney advised that Landon Williams had refused to resign as Plan Trustee or make restitution and denies any wrongdoing. Further, the other Trustees feel that they do not have the authority to remove Williams and do not believe that DOL has such authority either.

The Trustees are attempting to comply with all other issues raised in our notice letter of March 1, 1982, however, it is clear that they do not plan to correct the violations concerning Williams. To that extent, and as requested by the OE memorandum dated March 8, 1982, this matter is being returned to OE for consideration for referral for litigation. We are of the opinion that the Department should seek injunctive relief to enjoin Williams from serving in a fiduciary capacity. Further, the other Trustees may be vulnerable because of their failure to seek his removal. Should the Trustees fail to take corrective action on the other issues in the notice letter, the complaint could be expanded to include them as well.

Attachment

cc: Miami AO

The CHAIRMAN. What was the Office of Enforcement's response to those letters?

Mr. SEXTON. I believe they agreed, and went to the Solicitor's Office again to seek their concurrence in instituting the litigation to remove him.

The CHAIRMAN. OK. Therefore, we were right back where we were in mid-1980 when you had the recommendation from Mr. Daly to file litigation turned down by Mr. Goldberg, is that correct? We were right back where we started from.

Mr. SEXTON. Pretty much in the same position, yes, sir.

The CHAIRMAN. Now Mr. Lebowitz, who had sided with the Solicitor's Office in this case, was no longer Acting Administrator at this point. Isn't that correct?

Mr. SEXTON. Yes, sir, I believe that is true.

The CHAIRMAN. As I understand it, Mr. Mervyn Schwedt, had again become Acting Administrator for Enforcement. Is that right?

Mr. SEXTON. I believe that to be the fact, yes, sir.

The CHAIRMAN. Mr. Schwedt responded quickly to get the ball back into the Solicitor's court, did he not?

Mr. SEXTON. Yes, he did.

The CHAIRMAN. On April 7, 1982, Mr. Schwedt wrote Associate Solicitor Monica Gallagher that the Department should immediately seek injunctive relief to enjoin Williams from serving in a fiduciary capacity to the employee benefit plans for which he was a trustee. What was the Solicitor's response to Mr. Schwedt's proposal?

Mr. SEXTON. Senator, I do not believe I have a copy of that.

The CHAIRMAN. As I understand—go ahead.

Mr. SEXTON. I understand that there was a later meeting between the Administrator and the Solicitor that I was not a party in. I do not think I have a copy.

The CHAIRMAN. Well, as I understand, on April 28, 1982, Mr. Ryan, the then-Solicitor of Labor, now presently Solicitor of Labor, met with Mr. Jeffrey N. Clayton, who of course is the present Administrator of the pension and welfare benefit program, the office that administers the Office of Enforcement, and agreed to prepare litigation to remove Williams should his appeal fail.

Mr. SEXTON. Yes, sir, that is my understanding.

The CHAIRMAN. Have they prepared the litigation as of yet, to your knowledge?

Mr. SEXTON. Not—I think they have been working on it but it is not within my knowledge.

The CHAIRMAN. OK. Doesn't the statute of limitations run on this case in September of this year? Isn't that your understanding?

Mr. SEXTON. To the best of my knowledge, yes, sir, that is true.

The CHAIRMAN. Let's hope that we can be quick enough about it so that we get this litigation filed because I think this has gone on long enough with this kind of matter, and I think it is a lot more serious thing than perhaps the earlier Solicitor's Office analysis of this indicated or even that you indicated in your statement, Mr. Ryan. I think you are only as good yourself as the people who work for you because you cannot personally review every case, and I think we are making a heck of a case that this is not some inconsequential little $9,000 ditty. I mean, I suppose any case—if this was a $1 million things, and we think we have shown a pretty good case that a good percentage of $1 million is being, if not misused, certainly not used in the best interests of the employees—these cases are significant because they show a deeper, underlying sickness that may be permeating many other areas of the labor union, ERISA programs.

Mr. RYAN. May I comment just for a second, Senator?

The CHAIRMAN. Sure, sure.

Mr. RYAN. We hope that between now and late summer that either one of two things will happen which will make any lawsuit moot: Either, one, the Senate will pass the bill which we talked about, that something similar will be passed by the House and signed by the President, which I would really like to see happen; or some decision will be issued by the fifth circuit. If neither one of those things happens, then as you noted, we are prepared to go forward on this matter.

The CHAIRMAN. Well, I can report to you right now that I have a choice: I can poll out the racketeering bill in its present form—and I am not quite sure whether or not it has been watered down as you suggest but I believe it has been—and get it out to the floor as early as I can, and hopefully change it there, and I think probably that is the better approach in this committee because I do not think it should have been watered down to begin with but I also understand the difficulties of any subcommittee chairman in dealing with this committee and with the subcommittees. There just seems to be a real intent to water down any strong laws to try to resolve the problems in this area.

I think what I am going to do is agree to poll it out and hope that with your help we can amend it and strengthen it on the floor of the Senate, and hopefully in the House as well. Maybe that is the better approach to take. Otherwise, I may have difficulties getting quorums and it may be 2 or 3 weeks before we even get enough of a quorum to report it out. Therefore, let's work together to see if we can come up with some way of amending this on the floor to strengthen it, to stop this kind of thing from going on.

I appreciate your strong support on this because there is no excuse for anybody—no excuse for the employers, the employer trustees, the union leaders, or the union leader trustees—to be doing what has been done in this case and, I submit, in a lot of cases around this country. This case is just an example of a panoply of wrongful conduct that is going on all over this country. I do not know how many of these hearings we have to hold before we can really get in there and protect the employees.

I think this committee has an obligation—I agree with you—we have an obligation to try to do the best we can to protect those employees. It is amazing how many union employees are coming in to see me as committee chairman, even though their union leaders are saying that I am antiunion when I am not—I was raised in the union movement—because they believe we are the only people they can turn to, the only ones in the history of this committee they can turn to who might be able to do something about it. That is why we are holding these hearings, but I notice that I guess this hearing does not involve a nuclear freeze so I am not sure how much dissemination it will get but it has to be disseminated. We have to start letting people know in this country that there are people who are serious now down at the Department of Labor and there are people who are serious in the Labor Committee up here, who want to stop this stuff for the benefit of union employees, and I think that is very prounion. I do not see any other way to interpret it.

Let me go back to one more question for you, Mr. Sexton. I appreciate your testimony here today. As you can see, I am a little agitated about these types of things going on. I just cannot believe that we cannot do something more about them, and I know you are trying to do things about them. We are hopeful that we are encouraging you even more.

This is not even the second time Ms. Gallagher's name has come up or Mr. Lebowitz. Let me just say, Mr. Sexton, this question goes beyond the *Landon Williams* case. On March 2, 1981, you informed Mr. Schwedt in a memo that of 20 convicted ILA officials, at least 7 continued to serve in a fiduciary capacity to an employee benefit plan at the time that reports of investigation were prepared on the ERISA violations revealed in their criminal trials under other statutes. Most of these reports of investigation were at least a year old at the time of your letter to Mr. Schwedt. Did the Office of Enforcement or the Solicitor's Office, or anyone else in a supervisory capacity, ever ask you to follow up to determine whether these same officials were still serving as fiduciaries of these plans in 1981 or 1982?

Mr. SEXTON. No, sir, they did not but it is also within my own authority to investigate it. They would not have to tell me. We have done some following up on it and I believe there are only two other people besides Mr. Williams at this time that are serving in a capacity to the funds. There are also two others that still have union offices but it is my understanding that all of those, the other four individuals involved, are under appeal the same as Landon Williams' case is, and that is why we have not or I have not directed more investigative activity in this area because if we could not get him by then I did not figure we could do the others, either. We had considered his sort of a lead case.

The CHAIRMAN. We have already entered your letter into the record as Day Document No. 4, but let's reenter it in the record here again as Sexton Document No. 4. Without objection, we will do that, and without objection, we enter in Sexton Document No. 13 at this point. We will make the last one Sexton Document No. 12 and make this one Sexton Document No. 13. That which I have labeled as Document No. 12, we will make it No. 12(a). That is the memorandum for Monica Gallagher from Mervyn A. Schwedt.

[Sexton Document No. 12(a) follows:]

Sexton Document # 12 (A)

APR - - 1982

MEMORANDUM FOR: MONICA GALLAGHER
Associate Solicitor, PESP

FROM: MERVYN A. SCHWEDT
Acting Assistant Administrator
for Enforcement, PWBP

SUBJECT: Jacksonville ILA Longshoremen's and
Warehousemen's Pension, Welfare and
Vacation/Holiday Plans (the Plans)
Jacksonville, Florida
Case Nos. 42-4605(48) 42-4608(48)
42-4606(48) 42-4609(48)
42-4607(48) 42-4610(48)

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Attached are memoranda from the Miami Area Office and the Atlanta Regional Office detailing their attempts at voluntary compliance in subject cases. As you may recall, your office originally reviewed these cases and recommended that the Area Office attempt to secure voluntary compliance. The Miami Area Office issued a letter to the Plans' trustees on March 1, 1982.

On March 18, 1982, the trustees requested a 20-day extension of the notice letter period of time within which to respond. The Area Office approved the extension with the exception of the portions of the notice letter dealing with Landon Williams' resignation, requested restitution or action by the other trustees to remove Williams. On March 25, 1982, the Plans' attorney advised the Area Office that Landon Williams refuses to resign and denies any wrongdoing. The other trustees feel that they do not have authority to remove Williams.

We are of the opinion and hereby request that the Department of Labor immediately seek injunctive relief to enjoin Williams from serving in a fiduciary capacity to the Plans. The trustees are attempting to voluntarily comply with the other violations cited in the Area Office's letter. Should the trustees fail to fully comply with our demands, it is our opinion that the complaint could be amended to include those items.

Attachments

The CHAIRMAN. Therefore, as far as you know any or all of those trustees could still be serving?

Mr. SEXTON. As I say, we have had some contact and I believe there are only two of those that were convicted, in addition to Landon Williams, that are presently serving as fiduciaries of plans.

The CHAIRMAN. OK. Now, Mr. Sexton, I want to compliment you here on your testimony as well because all of your actions in this matter were proper. You and your people in Atlanta and Miami I think certainly did your share to keep this case alive.

At this time we will begin to get the Solicitor's side of the story. Our next witness will be Mr. Norman P. Goldberg, Counsel for Litigation in the Office of the Solicitor of Labor.

You have all been sworn in.

Mr. GOLDBERG. That is correct, sir.

The CHAIRMAN. Yes. I swore you all in at the beginning.

## STATEMENT OF NORMAN P. GOLDBERG, COUNSEL FOR LITIGATION, PLAN BENEFIT SECURITY DIVISION, OFFICE OF THE SOLICITOR, U.S. DEPARTMENT OF LABOR

The CHAIRMAN. Mr. Goldberg, on July 30, 1980, you wrote the Acting Assistant Administrator for Enforcement a memorandum declining litigation to remove Landon Williams as a trustee of the Jacksonville ILA Longshoremen's & Warehousemen's pension, welfare, and vacation plans and the South Atlantic ILA guaranteed annual income fund. Could you describe your reasons for declining litigation of this case?

Mr. GOLDBERG. Yes, sir. The problem—let me explain my perspective. I share your concern, Senator, about trying to clean up these funds.

The perspective, though, that you need to have in terms of my job is that I had very limited resources with which to do the job that was given to me. I had something like 20 attorneys in my office at that time. These attorneys were working on all of the ERISA litigation brought by the Department, including the *Central States* and *Culinary Workers* cases. Right now, today, there are 20 attorneys working on Central States and Culinary Worker problems alone.

At that time I had 20 attorneys. I had historically been able to bring only about one out of eight cases that were sent to me, so in that context I had to marshal my resources and put the attorneys on and bring those cases where I thought the abuses existed and where litigation was required. It was my perception, with respect to the case that was sent to me as to Landon Williams, that part of that problem had already been checked, because there had been a successful conviction, and if that conviction were affirmed on appeal, then Landon Williams would be removed.

It was my information at the time that the appeal was being briefed and that hopefully Landon Williams would be removed in the near future. In that context, I placed more focus on other cases where the abuses existed which were not being checked as a result of Justice Department prosecution.

With respect to the acquittal, because I know that the committee has focused on that issue, I felt that the conviction—as you may know, the court at the time of the conviction ordered the removal of Landon Williams from his position of trust, but stayed that order. Then there was an acquittal which was based largely on the same testimony that had been given by Mr. Gillespie in the criminal conviction case. I felt that in order to bring that case I would have to commit substantial resources to effectively conclude it, and that because the Justice Department appeal was working its way through the courts, I would be better off putting my resources in other cases. That is the reason, Senator, for the action that I recommended.

The CHAIRMAN. All right. Well, one thing that bothers me is, we have been going through the records up here and we wonder what those 20 attorneys have accomplished because, you know, for instance, nothing was done in the *Shenker* case until Jack Young was hired, and that was in 1981. If it is lack of resources then I think you should have said that. I do not think you should have just said, "Well, he has been convicted of tax evasion charges and therefore ultimately it will be resolved if that is held on appeal."

Mr. GOLDBERG. Senator, if I may, we had requested resources——

The CHAIRMAN. Acquitted on tax evasion charges, excuse me, and ultimately his conviction on the other charge, the bribery charges, may be held on appeal. Go ahead.

Mr. GOLDBERG. Jeff and Tim have done a terrific job in adding resources to our office, which is going to make my job——

The CHAIRMAN. We are encouraging them to do it.

Mr. GOLDBERG. And I appreciate that. The request for resources had been put in and it had moved all the way up the line through the Department. As to the reasons why no resources came, that is not an answer I am in a position to give you. I do not know.

The CHAIRMAN. Let me ask you this: When you made the decision not to proceed because of the acquittal on tax evasion charges, did you obtain a transcript of the Jacksonville trial in which Williams was acquitted on tax evasion charges?

Mr. GOLDBERG. No, I did not, but I would like to explain that response, if I may.

The CHAIRMAN. OK.

Mr. GOLDBERG. There was no transcript, as I think you know, that had actually been typed out. My attorneys——

The CHAIRMAN. Yes, but you could have ordered it and it could have been typed.

Mr. GOLDBERG. That is correct, sir.

The staff attorney spoke to the assistant U.S. attorney who tried that case, Mr. McCulley. We knew, based on that conversation, one, that there had been no transcript; two, that Mr. Gillespie had essentially testified in the same fashion as previously. I did not have any reason to believe that Mr. Gillespie's testimony had been discredited. All I knew was that there had been an acquittal. You have a conviction where the order for removal is stayed. You have an acquittal in which only the jury knows the reasons why. I felt that that complicated the case. It did not make the case not bringable; this case could have been brought but the question was, in my position, which cases should I bring? Because I thought the problem had been largely checked, I put my resources into the other cases. I would be happy to describe for you what my docket looked like at that time.

The **Chairman**. OK. Did you personally talk to McCulley, the——

Mr. **Goldberg**. I did not.

The **Chairman** [continuing]. The U.S. attorney?

Mr. **Goldberg**. My assistant, my staff attorney, who is a very competent fellow——

The **Chairman**. Now we were told that if we wanted the transcript as a committee, they could produce it in 5 days.

Mr. **Goldberg**. In my opinion, the transcript would not have aided me in connection with this decision. I could not assess the credibility of Mr. Gillespie based on that transcript, nor did I think his credibility was in question.

The **Chairman**. OK. Now you came to the conclusion in your July 30, 1980, memo that you would have to rely on much of the same testimony in a lawsuit to remove Williams that Mr. Robert Gillespie of United Trailer Services gave in Jacksonville and Miami. You said that since Gillespie's testimony "apparently was insufficient to obtain a conviction in one of the two cases, there is sufficient reason to be concerned that his testimony will not be sufficiently persuasive to entitle us to removal in a civil suit." I can agree with you, Mr. Goldberg, that there might be sufficient reason to be concerned but certainly insufficient reasons to shut this case down without further investigation and followup. Now did you interview Mr. Gillespie, for instance, to determine how credible his testimony might be?

Mr. **Goldberg**. I did not, and to my knowledge——

The **Chairman**. Did anybody on your staff?

Mr. **Goldberg**. To my knowledge they did not, sir.

The **Chairman**. Did anybody attempt to interview him?

Mr. **Goldberg**. To my knowledge they did not.

The **Chairman**. Did you talk to anyone else who was involved in the trial, other than the prosecuting attorney, I mean your assistant who did?

Mr. **Goldberg**. I am not aware of other people that he spoke to. He may well have but I do not know.

The **Chairman**. I cannot remember. Did you indicate that Mr. Gillespie was discredited as a witness, or that was represented to you?

Mr. **Goldberg**. No, sir, at no time was it represented to me that Mr. Gillespie's testimony was discredited. I felt, however, that since his testimony served as the basis of two counts of Federal tax evasion for which Williams was acquitted, that there was some reason to be concerned about the effectiveness of or our ability to secure removal on that basis.

The **Chairman**. Of course, as you know, the testimony of witnesses is only as good as the ability of the prosecutor or the defense lawyer to bring it out, and my understanding is the Miami prosecuting team told my staff that Gillespie was a tremendous witness and that they would expect his testimony to hold up in the trial regarding the appeal of Williams' Miami conviction. They also said that they thought Gillespie testified competently in the Jacksonville tax trial. We got all this by simply placing a simple phone call to Miami.

Now did anybody in your team or yourself think to ask the prosecutors what they thought of Mr. Gillespie's testimony?

Mr. Goldberg. My staff attorney did, sir.

The Chairman. He did?

Mr. Goldberg. Yes, he did.

The Chairman. I am talking about the Miami strike force attorney, now.

Mr. Goldberg. I am not aware as to whether my staff attorney spoke to the prosecuting attorney in Miami.

The Chairman. Well, I can tell you that in our interviews with them, they said he did not.

Mr. Goldberg. I will stand by that.

The Chairman. Did you or your staff contact Mr. William McCulley? Well, you did say that one of your staff members did contact Mr. William McCulley, the prosecutor in the Jacksonville tax case. As I understand it, your staff member said that Mr. McCulley basically told them that Gillespie was absolutely not discredited, or they told us that he was absolutely not discredited, my investigators.

You know, it is easy to look at these things in retrospect and I do not mean to pick on you because if you are overworked and there is a plethora of cases down there, that is a difficult thing. However, were you simply relying on a gut feeling that maybe this man's testimony would not stand up in a removal action?

Mr. Goldberg. No, sir. I was relying in large part on the resource issue. My memo specifically said if the appeal was unsuccessful, that I thought the Department should reconsider seeking removal of Williams on the same basis that had been recommended to me.

The Chairman. Well, did it ever occur to you that there might have been flaws in the presentation of the prosecution in the Jacksonville tax case?

Mr. Goldberg. That was certainly a possibility.

The Chairman. For example, Mr. Goldberg, again by a simple phone call, my staff was able to determine last week that those principal witnesses in the Miami conviction—Mr. Cotrone, Mr. Tatlebaum, and an undercover FBI agent, were not even called to testify in the Jacksonville tax case. Did anybody on your team make any such phone call to check up on the Miami prosecution of this matter?

Mr. Goldberg. Not that I am aware of.

The Chairman. Like I say, you did not obtain a transcript of the Miami trial, either, right?

Mr. Goldberg. We had the portions of the transcript that bore on this issue.

The Chairman. Did you read them?

Mr. Goldberg. The staff attorney read them.

The Chairman. I see. Who was the staff attorney?

Mr. Goldberg. Steven Kessler.

The Chairman. As a lawyer, I am a little bit dumbfounded as to how you think you could arrive at a legally defensible decision on these matters without really fully analyzing and studying the evidence at hand. For instance, in retrospect you agree that it would have been better to have looked at the transcripts of both trials, talked to the successful Miami prosecutors, before you decided not to go forward with litigation for the removal of Mr. Williams.

Mr. GOLDBERG. Sir, I never took the position that the case could not be brought, or that we could not take a good shot at seeking his removal. I thought it was made complicated by the related criminal proceedings: one conviction and a stay of removal; one acquittal. It would require a commitment of resources, and it was a problem that hopefully had been checked, so my focus turned to other abuse cases and other cases where there had been no check.

The CHAIRMAN. However, here you had a conviction in Miami on a serious charge of bribery, taking bribes while working with these particular funds, and you did have an acquittal in Jacksonville on related charges but in a case where they really did not call all of the witnesses. Who is to say how a judge or even a jury in this matter would rule on the same evidence, especially since I think our investigation has shown how much more serious this matter really is.

Mr. GOLDBERG. I would like to think that if we had put the time and resources into the case, we would have succeeded in removal. It was just a decision I had to make as to where to direct my resources.

The CHAIRMAN. As I understand it, you have just said that you would have reconsidered the possibility of removing this man if the Miami case was reversed.

Mr. GOLDBERG. That is correct.

The CHAIRMAN. However, your memo, of course, makes no mention of that as even a possibility for reconsideration if the appeal was reversed or if it was in fact going to be reversed.

Mr. GOLDBERG. Sir, we have some confusion on the memos because the last paragraph of my memo specifically says, if the appeal is unsuccessful—"On the other hand, if the judgment is reversed"—I am reading, incidentally, from my memo of July 30, 1980, to Mervyn Schwedt.

The CHAIRMAN. What page is that?

Mr. GOLDBERG. It is page 2. I do not know the exhibit number that you have assigned to it.

It says, "On the other hand, if the judgment is reversed the Department can reconsider the need to bring an independent action under 502 to have Williams removed."

The CHAIRMAN. I see. OK.

Without objection, then, let me put that particular memo, which is the memorandum for Merv Schwedt from Norman P. Goldberg, into the record at this point.

[The memorandum referred to follows:]

JUL 30 1980

MEMORANDUM TO: MERV SCHWEDT
Acting Assistant Administator for Enforcement

FROM: NORMAN P. GOLDBERG
Counsel for Litigation

SUBJECT: Removal of Trustee Landon Williams
ILA Employee Benefit Plans

Case Nos. 42-4605 through 42-4610
42-4735
42-4759

This matter was referred to us by memorandum dated October 22, 1979, with a recommendation that the Department of Labor act to remove Landon Williams as a trustee for certain ILA employee benefit plans. For the reasons discussed below, we do not believe that the Department should institute a new action to have Williams removed as a trustee before his appeal, which is now pending before the U.S. Court of Appeals, is resolved.

## FACTS

Landon Williams serves as a trustee for the Jacksonville ILA Longshoremen's and Warehousemen's pension, welfare, and vacation plans and for the South Atlantic ILA Guaranteed Annual Income Fund. In September, 1979, Williams was convicted in a federal district court in Miami of receiving unlawful kickbacks from United Trailer Services, Inc., a contributing employer to the Jacksonville Longshoremen's pension, welfare, and vacation plans. 1/ In a separate federal district court trial in Jacksonville, Williams was acquitted in March, 1980, of federal income tax evasion. The United Trailer kickback payments were the basis of two counts of the complaint in that case.

## DISCUSSION

ERISA section 411(a) provides that any person who has been convicted of certain crimes, including those of which Williiams was convicted, may not serve as a trustee of any employee benefit plan for five years after the conviction. Section 411(c)

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1/ The Miami Area Office has determined that the three plans lost a combined total of about $9,000 in contributions from United Trailer as a result of these kickbacks.

SJK
N.PG

further provides that if an appeal is filed, the five year period does not begin to run until the date of the final sustaining of the judgment of conviction. Thus, Landon Williams may continue to serve as a trustee for the ILA employee benefit plans until the Miami district court's judgment is finally sustained.

To effectuate the removal of Williams in the meantime, the area and regional offices have suggested that the Secretary of Labor bring an action under section 502 of the Act on the theory that Williams violated section 406(b)(3) in receiving the United Trailer kickbacks. To obtain an order removing Williams as a trustee, we will have to adduce much of the same evidence that was presented in the two criminal trials. This evidence consisted of testimony of Robert Gillespie, an officer of United Trailer who made the kickback payments, and certain documents tending to establish the actual payments.

Williams, as noted above, was acquitted in the Jacksonville trial. We would have to rely on much of the same testimony that Gillespie gave in Jacksonville and Miami, and since his testimony apparently was insufficient to obtain a conviction in one of the two cases, there is reason to be concerned that his testimony will not be sufficiently persuasive to entitle us to removal in a civil action.

For these reasons, and because the appeal may be decided in the near future, we recommend that no further action be taken at this time. If the judgment of conviction is affirmed, it would be unnecessary for us to bring an independent action to have Williams removed as a trustee, since section 411 will prohibit him from serving as a trustee for any employee benefit plan for five years. On the other hand, if the judgment is reversed, the Department can reconsider the need to bring an independent action under section 502 to have Williams removed.

The CHAIRMAN. Mr. Goldberg, who is your direct superior or who was your direct superior at that time in the Solicitor's Office?

Mr. GOLDBERG. Monica Gallagher was the Associate Solicitor; Robert Eccles was the Deputy Associate Solicitor.

The CHAIRMAN. I see. Was she your superior throughout the consideration of this case, or were both of them your superiors throughout the consideration of this case?

Mr. GOLDBERG. Robert Eccles had just been promoted, just in that timeframe. I think he was in that position. Monica Gallagher has been the Associate Solicitor for as long as or longer than I have been counsel.

The CHAIRMAN. Now it is my understanding you did consult with Ms. Gallagher about this case. Am I correct on that?

Mr. GOLDBERG. I am not sure. It would be customary for me to discuss informally with her recommendations that I might make where questions may be raised as to the exercise of my discretion.

The CHAIRMAN. What I have been told is that nobody even sneezes around there without her knowing about it. Is that too strong a characterization?

Mr. GOLDBERG. I think that is too strong a characterization. She relies on me to report to her——

The CHAIRMAN. Is it in the ball park, though?

Mr. GOLDBERG. Pardon me?

The CHAIRMAN. Is it in the ball park?

Mr. GOLDBERG. Monica Gallagher is an effective Associate Solicitor in seeing that she knows the kinds of information that she should know. She relies on me to inform her of matters that I am taking under my own consideration which may raise questions. I may well have discussed this with her but I do not have any specific recollection.

The CHAIRMAN. OK. Since you have no recollections, you do not know whether she gave you any instructions or recommendations at all?

Mr. GOLDBERG. If we did discuss it, I do not believe she would have given me instructions but we might have discussed it and tried to arrive at a consensus. However, I do not recall, quite honestly, Senator, whether we discussed it or not.

The CHAIRMAN. OK. Do you understand now that sections 411 and 502 are in no way contradictory, and that section 411 merely makes removal of a convicted union leader mandatory upon loss of an appeal?

Mr. GOLDBERG. I do.

The CHAIRMAN. And that there is nothing that says that you cannot go ahead with a section 502 to get rid of the union leader for a fiduciary breach earlier than you would if you had to await the outcome of his appeal on a related criminal conviction?

Mr. GOLDBERG. That is correct.

The CHAIRMAN. You understood that at the time?

Mr. GOLDBERG. Yes, I did.

The CHAIRMAN. OK. Because of the legal strategy that you chose on this case, rightly or wrongly—I have to believe wrongly but nevertheless maybe for reasons that you thought were right at the time—Landon Williams is still on the job almost 3 years after his conviction, and we have brought out all kinds of things here today that indicate that it is a lot more than just a $9,000 bribe that he took.

Mr. GOLDBERG. Senator, I understand that and I regard that as an unfortunate event. If I knew then what I know now, I would have made a different recommendation.

The CHAIRMAN. I take it, too, had you known the appeals process would be this slow you would have perhaps made another recommendation as well.

Mr. GOLDBERG. That is absolutely correct.

The CHAIRMAN. One final question, Mr. Goldberg: On May 14, 1981, you wrote Acting Assistant Administrator for Enforcement, Mr. Lebowitz, recommending the outlines of a voluntary compliance letter to be sent to the trustees of the various Jacksonville ILA employee benefit funds involved in this case. In this memo, you failed to ask Mr. Lebowitz to seek repayment of the $9,143 plus interest that represented the underpayment of contributions apparently used by United Trailer Services to finance the kickback from that company to Williams. Why didn't you recommend reinstitution of these funds by Williams?

Mr. GOLDBERG. Sir, I had not focused on that issue and I not sure whether it was an oversight. One difficulty which you have in terms of seeking voluntary compliance is that it has to be agreed to, and it is departmental policy that before they seek voluntary compliance they assess—I am not explaining this clearly. If the Department were going to pursue voluntary compliance but not bring litigation, and then if there were a refusal to comply with the steps that the Department required, the people seeking voluntary compliance ought to assess the likelihood of securing the relief they are seeking.

I think it might have been well advised for me to have included that request, although I dare say that because Mr. Williams is appealing from his conviction, that that money would not have been recouped but——

The CHAIRMAN. Well, you do not know that.

Mr. GOLDBERG. That is absolutely right.

The CHAIRMAN. However, what you seem to be saying is that the only time you go after voluntary compliance is if the trustees agree. That is what I interpret your statement to mean.

Mr. GOLDBERG. Well, the Department has some guidelines with respect to securing voluntary compliance. One is——

The CHAIRMAN. I think we ought to change the guidelines if it does not, when you know somebody has stolen out of pension funds, automatically go after voluntary compliance. If you are not doing anything else, you ought to at least do that.

Mr. GOLDBERG. I think it might well have been included in here. I should add, however, that the program has and does exercise their discretion in terms of seeking voluntary compliance as to what they should include in it, and it was well within the program's discretion to have added that request. However, I might well have put it in there and I am willing to acknowledge it may well have been an oversight.

The CHAIRMAN. Well, let's insert into the record as Goldberg Document No. 1 this memorandum, without objection.

[Goldberg Document No. 1 follows:]

Goldberg #1

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210

14 MAY 1981

**MEMORANDUM FOR:** ALAN LEBOWITZ
Acting Assistant Administrator
for Enforcement

**FROM:** NORMAN P. GOLDBERG
Counsel for Litigation, PBSD

**SUBJECT:** Jacksonville ILA Warehousemen's
Pension, Welfare, and Vacation/Holiday
Plans
Case No. 42-04608
42-04609
42-04610

This matter was referred to us by memorandum dated February 14, 1980. Since the issues raised in this matter are identical to those raised in the memorandum covering the Jacksonville ILA Longshoremen's Pension, Welfare, and Vacation/Holiday Plans, we recommend for the same reasons set forth in that memorandum that a letter be sent to the trustees advising them that steps must be taken to remedy the ERISA violations that have occurred.

RECEIVED

U.S. DEPARTMENT OF LABOR
Office of the Solicitor
Washington, D.C. 20210

14 MAY 1981

MEMORANDUM TO: ALAN LEBOWITZ
Acting Assistant Administrator
for Enforcement

FROM: NPG NORMAN P. GOLDBERG
Counsel for Litigation

SUBJECT: Jacksonville ILA Longshoremen's Pension, Welfare, and Vacation/Holiday Plans
Case No. 42-04605(48)
42-04606(48)
42-04607(48)

This matter was referred to us by memorandum dated November 21, 1979, with a recommendation that legal action be taken to recover plan assets allegedly lost as the result of fiduciary violations. For the reasons discussed below, we recommend that a letter be sent to the trustees advising them that certain steps must be taken to remedy the ERISA violations that have occurred.

## BACKGROUND

Pursuant to a collective bargaining agreement, certain employers associated with the Jacksonville Maritime Association and certain local unions of the ILA by Declaration of Trust dated September 26, 1957, established three plans to provide pension, welfare, and vacation benefits for covered Longshoremen. 1/ The plans are governed jointly by six trustees, of whom three are appointed by the employers and three are appointed by the unions. 2/ The trustees have delegated responsibility for daily operations of the plans to an administrator.

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1/ Although the trust instrument refers only to these three plans, the trustees have estblished a separate account for certain holiday benefits as part of the vacation plan. The ROI refers to the vacation plan as the "Vacation/Holiday plan."

2/ These same six trustees also govern the Jacksonville ILA employee benefit plans for warehousemen and another fund called the Container Royalty Fund. The Container ~~Royalty Fund is~~ maintained pursuant to the collective bargaining agreements between the same parties who established and maintain the subject pension, welfare, and vacation plans. The Department of Labor has previously determined in an opinion letter that this kind of fund is not an employee benefit plan within the meaning of ERISA section 3(3).

The ROI also shows that the trustees have transferred funds from one plan to another and have not distributed employer contributions to the plans in accordance with their own annual allocation formulas. In some instances the transfers were made as "loans" from one plan to another; in other cases, the trustees simply transferred to a plan more money from the escrow account than was allocated to it; and in still other cases, they transferred to a plan less money than was allocated to it. For example, certain contributions in the Longshoremen's Escrow Account were distributed during each fiscal year to the pension and vacation plans, and the residue was placed in the welfare plan. Since the trustees did not distribute to the vacation plan as much money as they had allocated to it, 3/ the welfare plan received more money than it should have. In fact, the trustees even have transferred funds between longshoremen's plans and warehousemen's plans.

Related to this problem is the trustees' failure to apportion joint income and expenses to the various plans. As noted above, contributions not distributed to the pension and vacation plans were placed in the welfare plan's account. These funds subsequently were invested in time certificates of deposit, but the income derived from those investments has not been allocated to each plan on the basis of its equitable interest in the money according to the allocation formula. All expenses for the longshoremen's and warehousemen's plans and the Container Royalty Fund were paid out of the welfare plan's operating account, and these sums also have not been allocated to the plans on the basis of their proportionate share of the expenses incurred.

As a result of these transactions, the plans have become indebted to each other. The pension plan received from both the longshoremen's and warehousemen's escrow accounts about $143,000 more than the amount that the trustees allocated to it out of the longshoremen's escrow account between September 30, 1975, and September 30, 1978. These excess funds are shown on the pension plan's financial statements as a debt owed to the longshoremen's welfare plan. At the same time, the trustees' failure to allocate to the pension plan its proper share of joint income and expenses has resulted in an overstatement of the plan's fund balance in the sum of about $163,000 as of September 30, 1978.

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3/ The trustees limited the vacation plan's balance of funds to $1,000 for certain tax purposes. When the vacation plan required more funds, money was transferred to it from other plans.

The effects of the trustees actions on the welfare plan can be summarized as follows. First, as a result of the trustees' failure to distribute employer contributions in accordance with the allocation formula and to apportion joint income and expenses to each plan on an equitable basis, the welfare plan's fund balance was overstated by about $606,643 as of September 30, 1978. At the same time, the welfare plan also was indebted to the Royalty Fund and the warehousemen's vacation plan in the sum of about $183,000 as the result of certain other transactions. 4/ On the other hand, the following sums of money were owed to the welfare plan by other plans as of the same date:

| | |
|---|---|
| Warehousemen's welfare plan | $248,012.86 |
| Longshoremen's pension plan | 143,194.11 |
| Royalty Fund | 64,910.79 |
| Longshoremen's vacation plan | 302.72 |
| | $456,420.48 5/ |

The effects of the trustees' actions on the vacation plan must be analyzed in light of the special way that the plan operated. The collective bargaining agreements define the vacation and holiday benefits that the plan will provide and specify the eligibility requirements to receive those benefits. The agreements provide that a covered employee must work a specified number of hours during the contract year to receive any benefits. 6/ Since each contract year runs from October 1 to September 30, the trustees do not know

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4/ Approximately $2,766 of this sum appears on the welfare plan's financial records as a debt owed to the warehousemen's vacation plan. This debt arose when a bookkeeper named Romia Johnson stole that sum of money from the vacation plan. The trustees for some undisclosed reason decided to show the loss on the vacation plan's records as a debt owed by the longshoremen's welfare plan. Johnson was convicted in federal court of embezzlement of employee benefit plan funds.

5/ The ROI notes that the $248,012.96 owed to the welfare plan by the warehousemen's welfare plan may be uncollectible, because all of the warehousemen's funds have been declining as the result of the declining number of hours worked by ILA warehousemen in recent years.

6/ Since contributions are made on the basis of all hours worked by all employees covered by the agreements, it is likely that contributions are made on behalf of some employees who do not meet the eligibility requirements to receive benefits.

until after September 30 of each year the amount of benefits to vacation plan will have to provide, and benefits are not payable until after the next contract year has begun. 7/ The vacation plan on October 1 of each year should have a balance of funds to provide all of the benefits that accrued during the contract year that just ended; contributions payable to the vacation plan thereafter should be held for the payment of benefits the following year.

As noted above, however, the trustees limited the vacation plan's balance of funds to $1,000. Contributions allocated to the plan in excess of that amount were either kept in the longshoremen's escrow account or transferred to the welfare plan, which paid the vacation and holiday benefits when due. Moreover, the trustees paid vacation and holiday benefits out of employer contributions that were intended for the following year's benefits. For example, to pay benefits due in July, 1976, the trustees used contributions that were made during the 1976 contract year, even though the contributions for those benefits were paid during the 1975 contract year, and the 1976 contributions should have been saved to pay benefits in 1977. Thus, if either the employers' obligation to make contributions or the vacation plan itself were to terminate on September 30, the plan would lack sufficient funds to pay the benefits that would become payable during the following December and July. 8/

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7/ Vacation and holiday benefits are payable twice each year, in December and in July.

8/ The ROI suggests that the vacation plan already has suffered a loss as a result of the trustees' actions which can be measured by the difference between the amount that the trustees allocated to the plan and the amount that the plan's financial statements show was transferred to the plan. The problem with this measure is that the financial statements contain false information because the plans' accountants incorrectly calculated the amounts of money transferred to the vacation plan. Further, since the plan's fund balance was limited to $1,000, any measure of loss based on the amounts actually transferred to the plan would be unrealistically high. Moreover, it is not clear that the plan has suffered any real loss to date, since all of the vacation and holiday benefits due under the terms of the collective bargaining agreements apparently have been paid.

## DISCUSSION

ERISA section 406(b)(2) provides that a fiduciary may not act in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or its participants and beneficiaries. In *Cutaiar v. Marshall*, 590 F.2d 523 (3d Cir. 1979), the court held that when identical trustees of two employee benefit plans whose participants and beneficiaries are not identical effect a loan between the plans, a *per se* violation of section 406(b)(2) exists.

In the present case the same individuals serve as trustees for the longshoremen's pension, welfare, and vacation plans as well as for the warehousemen's pension, welfare, and vacation plans. The plans have different classes of beneficiaries, different standards of eligibility for the receipt of benefits, and different levels of benefit payments. In short, the plans, when involved in the same transaction, have adverse interests that cannot simultaneously be represented by the same trustees. Accordingly, the trustees violated section 406(b)(2) by transferring funds between the plans with the result that the plans became indebted to each other.

Moreover, it was unlawful under section 406(b)(2) for the same individuals who served as trustees for these separate plans that are funded jointly through lump-sum employer contributions to decide how those contributions will be allocated to each plan. As noted above, the trustees often applied their allocation decisions retroactively to contributions that accrued to the plans after October 1 of each year.

It may be permissible under ERISA for the trustees to make the allocation decision prospectively before any contributions accrue to the benefit of the plans, since the trustees under those circumstances may be viewed as agents of the parties to the collective bargaining agreements who were authorized by the trust instrument to determine the amount of contributions for each plan. In this case, however, the employer contributions already had accrued under the terms of the collective bargaining agreements when the trustees made their allocation decisions, and it is arguable that at that time they were engaging in a transaction with each plan on behalf of different participants and beneficiaries whose interests were adverse to each other. 9/ Accordingly, it is impermissible for the trustees retroactively to decide how employer contributions should be allocated to the plans.

It also appears that the trustees have violated the plan documents in transferring funds between the plans. Section 5 of the Declaration of Trust provides that "The Trustees shall have full power and authority to apportion and allot (and in their discretion to change the apportionment and allotment) to each plan a proportion of the Employer's total contribution, but contributions once received, allotted and dedicated to a particular plan shall not thereafter be changed or transferred to another Plan." Since the trustees did transfer employer contributions from one plan to another after they had allocated them to particular plans, they failed to follow the plan documents, in violation of ERISA section 404(a)(1)(D).

For those reasons, we would approve of a letter advising the trustees that section 406(b)(2) prohibits the plan fiduciaries from transferring funds between the plans, or engaging in any other transactions that cause the plans to become indebted to each other. The trustees also should be advised that section 406(b)(2) prohibits them from deciding how employer contributions should be allocated to the plans after they have accrued. In addition, the trustees should be advised that their failure to transfer funds to the plans in accordance with their own allocation decisions constitutes a breach of section 5 of the Declaration of Trust, in violation of section 404(a)(1)(D) of the Act.

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9/ Although section 406(b)(2) does not refer to "plan assets," the section does require that the transaction "involve the plan." Since none of the plans has a specified interest in the employer contributions before they are allocated, it may be argued that transactions involving those contributions do not involve the plans. We believe, however, that each plan has a beneficial interest in those contributions, since it is certain that at least one of the plans will receive them. Significantly, the Department's definition of "plan assets" initially proposed on August 29, 1979 and reproposed on June 6, 1980 (29 CFR §2550.401b-1) includes any property "in which the plan has any beneficial ownership interest."

To remedy the violations that have occurred, the trustees of each plan should generally be required to rescind all of the prohibited transactions between the plans and to make the plans whole for any losses that have occurred, or in the future may occur, as the result of those transactions. In certain respects, this remedy essentially would require the current trustees to enter into new violations of section 406(b)(2). Because of this difficulty, we suggest that the Department advise the trustees that each of the plans should be put back into their rightful places, which may in large part require bookkeeping adjustments only. To the extent that it is determined from their response that more is required, it would be appropriate to advise them of the need to have each plan independently represented.

## OTHER MATTERS

The ROI addressed certain other issues that also may be dealt with by advising the trustees of their obligations under ERISA. First, it appears that the trustees have failed to require proper accounting of attorneys fees and travel and education expenses incurred by the plan's administrators and attorney in violation of sections 404(a)(1)(A) and (B). The ROI found that, between January 1, 1975, and September 30, 1978, the three plans paid a total of about $75,465 in travel and education expenses that were not properly documented. Further, the ROI found that the plan's attorney, Clark Toole, has received an annual retainer 10/ without providing information for the trustees to determine the reasonableness of his fees that he deemed to be outside the scope of his retainer agreement. Since undocumented expenses and unitemized bills in some cases may be a source of excessive administrative costs, we would approve advising the trustees that they should require documentation of attorneys' fees outside the scope of the retainer agreement and other expenses to meet their fiduciary responsibilities under ERISA.

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10/ Mr. Tole's annual retainer beginning January 1, 1975, was $7,500; effective January 1, 1978, the retainer was increased to $10,000. This retainer is apparently shared by the three subject plans with the three Jacksonville ILA warehousemen's employee benefit plans.

Second, the trustees apparently have violated the terms of the trust instrument by deciding to compensate themselves for their services. Section 4 of the Declaration of Trust provides that the trustees shall not receive compensation out of the funds administered by them for the performance of their duties, except that they may be reimbursed for necessary and reasonable traveling expenses. The trustees, however, have caused the plans to pay them each $50 for every meeting attended, without regard to actual expenses. During the period January 1, 1975, through September 30, 1978, the trustees received a total of about $4,000 from the plans pursuant to this arrangement. 11/ Since this compensation is prohibited by the trust instrument, the trustees are not administering the plans in accordance with the plan documents. Accordingly, we would approve advising the trustees that their receiving compensation other than reimbursements for actual expenses is in violation of the trust instrument, is prohibited by ERISA section 404(a)(1)(D), and is imprudent within the meaning of section 404(a)(1)(B).

408(c) problem

Third, the trustees have failed to obtain a fidelity bond 12/ that meets all of the requirements of section 412. For these reasons, we would approve advising the trustees that they must act to have the plan covered by a bond that meets all of the requirements of section 412 of the Act.

Finally, the ROI notes that the South Atlantic ILA Guaranteed Annual Income Fund (the GAI plan), the Container Royalty Fund, and ILA Local 1408 have not made contributions on behalf of their employees who participate in the subject plans on the same basis as other contributing employers. While other employers were obligated by the collective bargaining agreements to make contributions to the subject plans according to an hourly rate schedule for all hours, without limitation, worked by their employees, the GAI plan, the Container Royalty Fund, and Local 1408 limited their contributions to amounts based on a certain number of hours worked at the rate established by the collective bargaining agreements. The ROI concluded that the trustees acted imprudently in participating in this agreement.

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11/ This sum represents the same compensation that the trustees received for attending meetings for the Jacksonville warehousemen's plan; i.e. the trustees received a total of $4,000 from the 6 plans.

12/ The bond that was in effect at the time the ROI was prepared expired on March 1, 1980. According to the authors of the ROI, the present bond contains the same defects as the previous bond.

The problem with this conclusion is that the GAI plan, the Container Royalty Fund, and Local 1408 did not obligate themselves to make any contributions on behalf of their employees to the plan. Nothing in ERISA explicitly requires a plan to permit participation of employers only if they make contributions on the same basis as all other employers of participants. We are not prepared to construe Title I to contain such a requirement. That construction, however, would be necessary to reach the conclusions that the GAI plan, the Container Royalty Fund, and Local 1408 should have been required to make contributions for all hours worked by their employees. Accordingly, we do not believe that a violation of the Act should be asserted on the basis of the trustees' accepting contributions from those employers on a limited hour basis. 13/

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13/ It has been suggested that we may wish to refer this case to the Department of Justice to review whether the plan trustees and employers other than the GAI plan, Container Royalty Fund, and Local 1408 who were making contributions to the plans have violated section 302 of the Taft-Hartley Act. Section 302(a) provides that it is unalwful for an employer to pay any money to an employee representative. Section 302(c)(5) provides an exception to this rule for employer contributions to a trust fund in which employees "of other employers making similar payments" are participants. It is arguable that since the GAI plan, Container Royalty Fund, and Local 1408 were making contributions pursuant to the limited hour arrangement, their contributions were not similar to those of other employers within the meaning of section 302(c)(5). Under this analysis, it could be argued that it would be unlawful for the other employers to make contributions to the plans, and accordingly, unlawful under section 302(b) for the trustees to receive those contributions. The Department of Justice, however, never has taken this position. For the reasons set forth in the text, and in the absence of any evidence of abuse, we do not recommend referral on this basis.

The CHAIRMAN. Mr. Goldberg, the $9,143 shortfall was identified by Mr. Day in his supplemental report of investigation of January 18, 1980, that is already in the record as Day document No. 2. Is it possible that you wrote your memo to Mr. Lebowitz on the voluntary compliance matter without the benefit of reading the supplemental report of investigation?

Mr. GOLDBERG. Well, this memorandum was prepared by my staff attorney whom I have a tremendous amount of confidence in, and I feel confident in saying that he read all the information available to him before he——

The CHAIRMAN. However, you had not seen it, then.

Mr. GOLDBERG. No, sir, I had not.

The CHAIRMAN. The memo was prepared by the staff man. Well, I think maybe you should retrench a little bit on our confidence in that particular staff member because if you have glaring right out there the issue of $9,000-plus, it seems to me you should have done something about it or your staff member, upon whom you were relying, should have done something about it.

Mr. GOLDBERG. I do want you to know I have confidence in the staff attorney, and I could have made that call, too. If it was an oversight, I will take responsibility for that.

The CHAIRMAN. I am going to break for about 10 minutes. Our next witness will be Mr. Alan Lebowitz. Just give me a few minutes and we will be right back. We will recess for a few minutes.

[Recess taken.]

The CHAIRMAN. Our next witness will be Mr. Alan Lebowitz, who is former Acting Administrator for Enforcement, Office of the Solicitor.

Mr. Lebowitz, will you raise your right hand to be sworn?

Do you swear, under penalty of perjury, that the testimony you are about to give will the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LEBOWITZ. I do.

## STATEMENT OF ALAN LEBOWITZ, FORMER ACTING ASSISTANT ADMINISTRATOR FOR ENFORCEMENT, PENSION AND WELFARE BENEFITS PROGRAM, U.S. DEPARTMENT OF LABOR

The CHAIRMAN. Mr. Lebowitz, for what period did you serve as Acting Director for Enforcement?

Mr. LEBOWITZ. From March 9, 1981, to March 9, 1982.

The CHAIRMAN. As I understand, some time in March 1981 you became involved in the Landon Williams case when you began thinking about a voluntary compliance letter. Is that correct?

Mr. LEBOWITZ. In May, I guess the date is May 24, 1981, I received a memorandum from Norman Goldberg in connection with the Jacksonville ILA investigations, yes, sir.

The CHAIRMAN. As you know, you had consistent recommendations to remove Williams made by your people in the field. Their view was endorsed by your predecessor, Mr. Daly, and by your successor, Mr. Schwedt. What factors influenced you to come down on the side of the Solicitor's Office in this case?

Mr. LEBOWITZ. To be perfectly honest, Senator, I was not focusing on the Landon Williams aspect of that case at that time. What I got was a memorandum from Mr. Goldberg that went into some detail about all of the other issues. It did not specifically deal with Mr. Williams' involvement with the case. I was aware of the initial recommendations of the Office of Enforcement and I was also aware of the Solicitor's July 30, 1980, response with respect to that recommendation. I had not been made aware by anybody on my staff in the Office of Enforcement that there was any substantial disagreement with that July 30, 1980, recommendation.

As a result, as I said, my focus was on the non-Landon Williams issues and I agreed that voluntary compliance seemed appropriate with respect to those issues. It was that, principally, which I was proposing to Mr. Lanoff who was the Administrator at that time.

The CHAIRMAN. Well, did it occur to you that Mr. Goldberg had arrived at his decision to litigate without reading a transcript of the Jacksonville trial, which of course was the cornerstone of his legal theory in the case?

Mr. LEBOWITZ. As I said, Senator, I really did not focus on the Landon Williams piece of this case at all. It had all come up 18 months before I had become involved in the——

The CHAIRMAN. Now that you know, though, does it bother you that he did not look at the transcript?

Mr. LEBOWITZ. I do not know that I can accurately answer that question. I do not know what he was thinking at the time or what the transcript might have shown. I did know, however, or at least it was my assumption since there was no disagreement with respect to the 1980 recommendation made known to me by the OE staff or by anybody from the region, it did not seem to me that there was any reason to look behind that 18-month-old recommendation.

The CHAIRMAN. Let me just, Mr. Ryan, make the record straight for your information on your, I think, good comments at the beginning of this. I have checked on it and the only way we are going to get that bill out of this committee is to poll it out without the necessary enforcement language in for those who are convicted prior to the date of the bill. Therefore, I have ordered that we poll it out today and have reserved my right on the floor to try to put that language back in.

I will be honest with you. I think it is a disgrace, is what it is, that that was the only way the subcommittee chairman could get it out of the subcommittee because of certain Senators, and the only way that we are going to get it out of the full committee. I do not expect anybody to object to that polling today but if that happens, I am just going to raise unholy hell all over this country. It is time—you know, this is a bipartisan bill. This is not some Republican thing and it is not some antiunion bill. This is a bill to protect workers, and I think everybody in law enforcement agrees with what you have said. I certainly do. Therefore, all I can say is, let's go to work and see what we can do to make sure that Senators on the floor do what really they ought to do and that people in the House do what they ought to do.

Now, Mr. Lebowitz, in October 1981 you sent a draft voluntary compliance letter to the Atlanta regional office for review and comment. In retrospect, do you think that letter dealt adequately with the problems at hand?

Mr. LEBOWITZ. Well, I think the Atlanta region was very diligent in pointing out to us in their review of that letter that there were things that it did not deal with and other aspects should have been dealt with in more detail.

The CHAIRMAN. Who drafted that version of the letter that you sent to the Atlanta office last October?

Mr. LEBOWITZ. It was drafted by someone on the Office of Enforcement staff.

The CHAIRMAN. Do you know who?

Mr. LEBOWITZ. Yes, I believe it was Virginia Bartlett.

The CHAIRMAN. I see. Why did the letter evade the Williams removal issue?

Mr. LEBOWITZ. As I said before, Senator, I was not even aware that the Williams issue was still an outstanding issue.

The CHAIRMAN. Well, in fact you knew——

Mr. LEBOWITZ. It was my thought that the July 30, 1980 memo had put that issue to rest, at least until the appellate court rendered its verdict.

The CHAIRMAN. Well, you surely knew at that time that the Solicitor did not want to go forward on that issue.

Mr. LEBOWITZ. I knew what was in the 1980 memo with respect to that, yes, sir.

The CHAIRMAN. Why didn't you at least ask the trustees to place some sort of safeguards on Williams so as to avoid further breaches of their fiduciary responsibility or of his fiduciary responsibility?

Mr. LEBOWITZ. I think the only answer I can give to that is that I had not been made aware by the OE staff or anybody else involved in the case in the national office that the Williams aspect of the case was an aspect that was to be pursued at that time. Once the draft letter was sent to the Atlanta region and to the Miami area office, they raised those issues and recommended that it be put into the letter, and of course as you know it was.

The CHAIRMAN. However, the draft letter was totally silent——

Mr. LEBOWITZ. That is right.

The CHAIRMAN [continuing]. As to any culpability on the part of Williams, let alone the culpability that we think we are showing here in this hearing today.

Mr. LEBOWITZ. Yes, sir, it was.

The CHAIRMAN. Why didn't the letter propose restitution of the $9,143 plus interest that represented the underpayment of contributions by United Trailer Services to finance the kickback to Williams?

Mr. LEBOWITZ. I think the letter essentially tracked the recommendations that came down from the Solicitor's Office.

The CHAIRMAN. You are saying from Mr. Goldberg?

Mr. LEBOWITZ. Yes, sir. That issue was not raised in that memo and, as a result, it was not raised in the——

The CHAIRMAN. Therefore, what you seem to be saying is that you were dependent upon the input from the Solicitor's Office in order to make these decisions.

Mr. LEBOWITZ. Well, I mean, that obviously had a substantial influence on what ultimately went into the letter. It did not preclude us from adding that but again, we focused principally on the issues that were raised in that piece of the case, feeling that the other piece of the case, the Landon Williams piece, had been dealt with some 18 months before that.

The CHAIRMAN. Well, Mr. Lebowitz, your enforcement people in the field had provided your office with reams of material that differed with Mr. Goldberg's conclusions. There were the reports of investigation prepared by Mr. Day, the memos from Mr. Withers and from Mr. Sexton. Did you review any of these materials before you sent off your voluntary compliance letter?

Mr. LEBOWITZ. Mr. Chairman, at that time not only was I the Acting Assistant Administrator for Enforcement but I continued to have my permanent position as Assistant Administrator for Fiduciary Standards. Given the fact that I had literally two jobs to do, there were literally dozens of cases that passed through my desk every week. If I had taken the time to read the full background file on every case before making a decision as to how to pursue and dispose of those cases, I would still be reading cases from a year ago.

I had to rely on the staff. I had to rely, as Mr. Clayton said in his opening statement, on the permanent OE staff that had background and had knowledge of what had transpired before, and none of these issues were raised to me as problems by the OE staff.

The CHAIRMAN. Well, can you give us any illustrations of any successful removals from all the cases that your office had?

Mr. LEBOWITZ. Which the Office of Enforcement——

The CHAIRMAN. Yes. Do you know of any successful removals?

Mr. LEBOWITZ. During the time that I was the Acting Assistant Administrator for Enforcement I cannot remember any, but that does not mean there were not.

The CHAIRMAN. Mr. Ryan?

Mr. RYAN. Yes, Mr. Chairman. It is my understanding that there have been literally scores of removals based on section 502, some which Mr. Goldberg could comment on. It has been used. We feel it is an effective tool and no doubt it will be used in the future. Unfortunately, it will have to be used more and more frequently if this bill comes out the way it appears it is going now.

The CHAIRMAN. These have occurred under you, I take it, since you have been there?

Mr. RYAN. I did not hear you, Senator.

The CHAIRMAN. These removals occurred since you have been there, under 502?

Mr. RYAN. Some have. Some took place before I got there.

The CHAIRMAN. Do you know of any effective removals as the result of criminal convictions—that is really what I am driving at—or in lieu of criminal conviction?

Mr. GOLDBERG. Senator, I am not aware that there has been a case that we have brought for removal——

The CHAIRMAN. It is my understanding there have not been any in lieu of criminal conviction.

Mr. GOLDBERG. Right. There have been many cases brought where we have worked in tandem with the Department of Justice, where indictments are about to come down or indictments are pending, and we have succeeded by consent decree and in other orders, in removing scores of fiduciaries from positions of trust under section 502.

The CHAIRMAN. OK. Mr. Lebowitz, in a June 30, 1981, letter to Ian Lanoff, you pointed out that of 19 ILA cases referred to the Solicitor's office, the Solicitor recommended litigation with respect to only 2 cases and you state that "due to the sensitive nature of these cases, we thought you should be aware of the Solicitor of Labor's recommendations not to litigate the majority of them." Now what did you mean by "sensitive"?

Mr. LEBOWITZ. I am trying to remember exactly but these had been, as I recall, highly publicized situations and investigations and there had been hearings, I believe, before the Permanent Subcommittee on Investigations with respect to these cases. I just felt that it was appropriate to let the Administrator know what the Solicitor had recommended before we proceeded further.

The CHAIRMAN. I see. What was Mr. Lanoff's response to your letter?

Mr. LEBOWITZ. Mr. Lanoff's response was to proceed with voluntary compliance and to consider litigation if voluntary compliance was unsuccessful.

The CHAIRMAN. Now we know that Landon Williams is still serving as the fiduciary of eight employee benefit funds in Jacksonville. Is there any chance that the other six convicted felons on Mr. Sexton's list may also be serving?

Mr. LEBOWITZ. I think Mr. Sexton had testified previously that there were two others who were presently serving in some capacity or another with respect to an employee benefit plan, other than Mr. Williams, who are like Mr. Williams, whose convictions are on appeal.

The CHAIRMAN. Did you seek to remove any of these officials under the section 502 strategy that was proposed by the Atlanta regional office and the Miami area office for removing Mr. Williams?

Mr. LEBOWITZ. I am not aware of any other recommendations from the Atlanta region with respect to anybody but Mr. Williams.

The CHAIRMAN. Did you provide the Solicitor's Office with the list of names supplied Mr. Schwedt by Mr. Sexton?

Mr. LEBOWITZ. I cannot answer that. I do not know.

The CHAIRMAN. OK. During your yearlong tenure as Acting Assistant Administrator for Enforcement, did you conduct any studies for unions other than the ILA or ILA locals outside the Atlanta region to determine whether convicted union officials were still serving in fiduciary capacities?

Mr. LEBOWITZ. I cannot cite anything specific to you. I am aware that there is correspondence and communication back and forth between the field and the Office of Enforcement on matters like that, and when it comes to the attention of the national office that a union official or a plan official has been convicted, that information is conveyed to the field with a request that they investigate whether that individual is still serving.

The CHAIRMAN. However, you do not recall any at this time.

Mr. LEBOWITZ. I have no specific names to give you, no, sir.

The CHAIRMAN. You have no idea how widespread this particular problem may be?

Mr. LEBOWITZ. No, sir, I cannot say.

The **Chairman**. Let me turn to you, Mr. Ryan. Do you think that Mr.—this is a tough question to ask publicly but I think it needs to be asked—do you think that Mr. Goldberg acted wisely in failing to obtain and review the transcript of the Jacksonville tax evasion trial on which he was basing his decision to decline litigation to remove Landon Williams as the trustee of the ILA employee benefit funds in Jacksonville?

Mr. **Ryan**. If that was the only basis for making his decision—that is, the tax evasion decision—then I think some criticism may be justified. My understanding, however, is that two other factors were considered: one, resources, which as Mr. Goldberg has said were at a really critical point at that time and which he had absolutely no control over; and, two, the conviction of Mr. Williams in the criminal trial and the pending appeal.

Given the resource question, given the conviction in the criminal case, I think the decision that was made at that time—and I was not there and I feel I can be a little bit objective about it—was the proper decision.

The **Chairman**. Except in retrospect I think you have to admit it was an improper decision because when you look at all the factors that we have been able to bring out with really not a whole lot of investigation, out of the same files and materials that Mr. Goldberg had access to——

Mr. **Ryan**. Looking at it today and knowing that the appeal has still not been decided, then it is very easy to make the decision that something else should have been done. Obviously, because you have access to Mr. Clayton's memorandum to me, we have made that decision, but looking at it now when the decisions were made 2 years ago, thinking that a decision would be coming from the circuit court of appeals, recognizing that they had significantly less people than they have now, about half, I think the decision is totally defensible.

The **Chairman**. Well, I do not but I will say this to you: I do think that there are some defenses. I do not think that they are justifiable. I do not think that it is justifiable to think that because something is appealed it is going to be decided in 9 months because we all know that those appeals can go up to 3 or 4 years. Therefore, I think if you look at the facts—and we are dealing with attorneys and my investigators are not attorneys and yet they have been able to pull all this stuff out—it is a lot more than a $9,000 bribery charge.

What I am saying is that it is important that you get all the facts before we made these kinds of decisions, and apparently that was not done. However, there were enough facts there and enough recommendations there from your leaders down there in the area that frankly I do not see how the decision could have been made in any other way, other than to push ahead and get this guy removed any way you could to protect those workers' pension funds, but I guess that is an area where you and I just disagree.

I appreciate your support for the Nunn-Rudman antiracketeering bill but I want to make sure that I understand your interpretations of sections 502 and 411 of ERISA in case Nunn-Rudman encounters some difficulties or delays. Do you think as I do that section 502 adds a mechanism for more rapid removal of convicted union officials?

Mr. **Ryan**. We believe that we have authority to seek removal of individuals who have breached their fiduciary responsibility under 502. Will it be as rapid as the bill which we proposed? No. Will it be as effective? No. Is it what we want? Not really. As Mr. Goldberg has stated and Mr. Clayton has stated, both formally before this committee and informally before you—and I think you are probably the only person on this committee that understands this, Senator—there is a real need to do a much more effective job defending pension participants and beneficiaries than is being done now, and we do not need to take lawyers and have them spend time removing people from office after they have been convicted when all we need is legislation which will effectuate that immediately.

Therefore, I can guarantee you that we will work with you day and night to see that decision of this committee modified.

The **Chairman**. Let me put in the record various Ryan documents, No. 1, which would be a memorandum from the American Law Division to myself as chairman of the Senate Committee on Labor and Human Resources. Ryan Document No. 2 will be a memorandum for T. Timothy Ryan, Jr., from Jeffrey N. Clayton.

[Ryan Documents Nos. 1 and 2 follow:]

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

Ryan #1

May 26, 1982

TO : Honorable Orrin Hatch, Chairman
Senate Committee on Labor and Human Resources
Attn: Ray Mollenhoff

FROM : American Law Division

SUBJECT : Relationship Between Sections 409 and 411 of ERISA: Removal of Fiduciaries for Breach of Duty and for Criminal Conviction

This memorandum is in response to your request for information on the relationship between sections 409 and 411 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1109 and 1111 (1976). The specific question raised is whether the authority of a court to order the removal of a fiduciary under section 409 is encumbered or limited by the provisions of section 411, which prohibits convicted or imprisoned persons from holding office under a plan for five years.

Section 409 of ERISA sets forth the liability of an ERISA fiduciary for breach of fiduciary responsibility. A fiduciary who breaches any of the responsibilities, obligations, or duties imposed by the Act becomes personally liable to the plan to make good any losses resulting from the breach, and must restore any profits made from the use of the plan's assets. The court may order such other "equitable or remedial relief as it may deem appropriate, including removal of the fiduciary." Section 409 also provides that a fiduciary may be removed for a violation of section 411 of the Act. 29 U.S.C. § 1109(a)(1976).

Enforcement of section 409 is by civil action in a district court of the United States. Section 502(a)(2) provides that a civil action may be brought by the Secretary of Labor, or by a participant, beneficiary, or fiduciary for appropriate relief under section 409. 29 U.S.C. § 1132(a)(2)(1976). The district courts of the United States have exclusive jurisdiction of such actions. 29 U.S.C. § 1132(e)(1)(1976).

Section 411 provides that no person who has been convicted of a specifically enumerated list of disqualifying crimes, or has been imprisoned as a result of a conviction of such crimes, shall serve, or be permitted to serve, as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan, or as a consultant to any such plan, for a period of five years after the conviction, or after the end of the imprisonment, whichever is later. The disqualified person may serve the plan, however, if his citizenship rights have been fully restored, or if the United States Board of Parole has determined that his service would not be contrary to the purposes of the Act. Section 411 is a criminal statute. Any person who intentionally violates its provisions shall be fined not more than $10,000 or imprisoned for not more than one year, or both. 29 U.S.C. § 1111 (1976).

It is clear from the statutory language that the removal authority of the court under section 409 is not dependent on the criminal disqualification provisions of section 411. The final sentence of section 409(a), providing that a "fiduciary may *also* be removed for a violation of section 411 of this Act" (emphasis added) clearly implies that the criminal removal provisions of section 411 are in addition to, and not a substitute for, the civil removal provisions of section 409.

This conclusion is supported by the legislative history. The Senate Finance Committee Report accompanying S. 1179, 93d Cong., 1st Sess., indicated that civil and criminal removal actions would both be available under that bill:

> Appropriate equitable relief may be granted in a civil action. For example, injunctions may be granted to prevent a violation of fiduciary duty, and a constructive trust may be imposed on the plan assets, if needed to protect the participants and beneficiaries. Also, the bill specifically provides that a fiduciary may be removed through civil action brought by the Secretary or participants or beneficiaries if he has violated any of the specified fiduciary obligations, or is serving in violation of the criminal conviction provisions. (The Attorney General also may bring an action to remove in the latter case.) Sen. Rep. No. 93-383, 93d Cong., 1st Sess. 105-06 (1973), I Legislative History of ERISA at 1173-74.*

Similarly, the House Report accompanying H.R. 2 stressed the broad enforcement powers of the bill:

> The enforcement provisions have been designed specifically to provide both the Secretary and participants and beneficiaries with broad remedies for redressing or preventing violations of the Act. The intent of the Committee is to provide the full range of legal and equitable remedies available in both state and federal courts and to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibilities under state law for recovery of benefits due to participants. H.R. Rep. No. 93-533, 93d Cong., 1st Sess. 17 (1973), II Legislative History of ERISA at 2364.

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* Reference is to Sen. Comm. on Labor and Public Welfare, Legislative History of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (Committee Print, April 1976).

The House-passed version of H.R. 2 contained the language which eventually became section 409. See H.R. 2, 93d Cong., 2d Sess. § 111(d), as passed by the House, Feb. 28, 1974, III Legislative History of ERISA at 3953. The Senate-passed version authorized the Secretary of Labor to petition the district courts for removal of a fiduciary who has failed to carry out his duties, and for the removal of any person serving in violation of the criminal disqualification provisions. H.R. 2, 93d Cong., 2d Sess., § 692, as passed by Senate, Mar. 4, 1974, III Legislative History of ERISA at 3815-16.

According to the Conference Report, the conference agreement on civil actions by the Secretary of Labor for appropriate relief, including removal of a fiduciary, generally conformed to the provisions as passed by the House. The Conferees stated that the "Secretary of Labor may bring an action for breach of a fiduciary duty or to enjoin any act or practice which violates the provisions of title I of the Act or to obtain any other appropriate relief to enforce any provision of that title." H.R. Conf. Rep. No. 93-1280, 93d Cong., 2d Sess. 327 (1974), III Legislative History of ERISA at 4594. The Conference Report also indicated that a "fiduciary is to be subject to other appropriate relief (including removal) as ordered by a court." H.R. Conf. Rep. No. 93-1280 at 320, III Legislative History of ERISA at 4587. There was no indication that the Secretary's authority to seek removal under the civil relief provisions of the Act would be limited to situations in which the fiduciary had been convicted of a disqualifying crime.

The authority of the Secretary of Labor to seek removal of a fiduciary under section 409, without regard to the criminal removal provisions of section 411, is also confirmed by the decision of the Second Circuit in Marshall v. Snyder, 572 F.2d 894 (2d Cir. 1978). That case involved an action commenced by the Labor Department on January 20, 1977, seeking the removal of several trustees from their fiduciary positions in three employee benefit plans, requesting the appointment of a receiver for the plans, and asking for rescission of certain transactions and an accounting. The District Court entered an order enjoining the making of any payments to the trustees, and ordering the appointment of a receiver for the plans. The Court of Appeals affirmed the authority of the trial court to replace the trustees with a court-appointed receiver. 572 F.2d at 901-02.

Section 411 was modeled on section 504 of the Labor Management Reporting and Disclosure (Landrum-Griffin) Act of 1959, 29 U.S.C. § 504(1976). In United States v. Jalas, 409 F.2d 358 (7th Cir. 1969), the Seventh Circuit held that the United States did not have standing under section 504 to bring an injunctive suit to prevent a convicted union official from being re-elected to office. Relying on the doctrine that the courts generally have no power to enjoin the commission of a crime, the court held that the sole remedy for the complained-of wrong was criminal prosecution under section 504, which it described as "patently a criminal statute contemplating proceeding by indictment or information." 409 F.2d at 360. In the light of this case, it could be argued that civil relief is not available under ERISA to remove a plan official who is serving in violation of the criminal disqualification provisions of the Act. It is true that the House-Senate compromise omitted the language from the Senate bill which permitted suits, by either the Secretary of Labor or the Attorney General, to remove such officials. By adopting the House version, the Conferees appear to have limited the enforcement of section 411, with respect to non-fiduciary officials, to criminal indictment or information by the Justice Department. As noted, however, section 409 expressly provides that a fiduciary may be removed for a violation of section 411. A fiduciary, unlike other plan officials, thus appears to be subject to both civil and criminal removal procedures.

Finally, it is clear from the structure of sections 409 and 411 that separate and independent enforcement procedures are necessary. Section 409 is a civil relief provision, limited in its application to fiduciaries. It permits the removal of a fiduciary, if deemed appropriate by the court. Enforcement is by civil suit. A breach of fiduciary responsibility, obligation, or duty must be found. There is no requirement of a criminal conviction or imprisonment.

Section 411, by contrast, is a criminal statute, applicable to all administrators, officers, trustees, custodians, counsels, agents, employees, and consultants who serve a plan, not merely to fiduciaries. Removal is mandatory upon conviction, or upon the sustaining of the conviction on appeal, whichever is later. Enforcement is by criminal prosecution by the Attorney General, rather than by the Secretary of Labor or by a participant or beneficiary. There is no need for a finding of a fiduciary violation, but one of the specifically enumerated crimes must have been committed.

Vincent E. Treacy

Vincent E. Treacy
Legislative Attorney

Ryan #2

**U.S. Department of Labor**

Labor-Management Services Administration
Washington, D.C. 20216

Reply to the Attention of

MEMORANDUM FOR: T. TIMOTHY RYAN, JR.
Solicitor of Labor

FROM: JEFFREY N. CLAYTON
Administrator, PWBP

SUBJECT: Removal of Landon Williams--
ILA Employee Benefit Plans

This is to confirm the understanding reached at our meeting on April 28, 1982, concerning the above matter. As you know, by way of background, during 1979 our Office of Enforcement recommended enforcement action to your Plan Benefits Security Division. In 1980 the Plan Benefits Security Division returned the matter to PWBP, declining litigation on the basis, among others, that the appeal of Landon Williams' criminal conviction was expected to be decided in the near future, and thereupon, if there was an affirmance, Mr. Williams would be removed by virtue of ERISA §411. For reasons not now known the appeal has not yet been decided.

On March 1, 1982, the Miami Area Office initiated voluntary compliance efforts, through which they attempted to achieve the resignation of Williams. Williams declined. The matter was then again referred to your staff by PWBP on April 7, 1982, with a request that you immediately initiate litigation to remove Williams.

At your request we met on April 28 to discuss this recommendation and to evaluate the options available to the Department. After reviewing the underlying facts and policy objectives, we were in agreement as to a course of action, as follows:

1. The matter has been reopened in PBSD and will be given consideration just as any new referral for litigation, although taking into account its history to the extent relevant.

2. It is appropriate for the Department to reexamine possible enforcement action in this matter at this time, in view of the fact that September 1982 brings a significant statute of limitations date. While the court of appeals may well have decided the Williams appeal before that time, making it unnecessary for us to proceed, we agreed on the desirability of having our litigation papers prepared and ready to file before that date should it be necessary. Our complaint would seek Williams' removal as a trustee.

3. Because the Department has heretofore failed to seek emergency relief, while knowing of Williams' having remained in office, it is unlikely that a court would be persuaded to grant a preliminary injunction at this time. Accordingly, no preliminary injunctive relief will be sought.

In the interim, we also agreed that the Department could fruitfully pursue related matters.

1. Attorneys from your Plan Benefits Security Division will remain in contact with the Department of Justice attorneys now handling the appeal. If they learn of any developments likely to affect the decisions set forth above, they will promptly alert us.

2. The most recent PWBP communication indicates that a further investigation/negotiation with the other trustees of the plan is now in progress. We also discussed the possibility of PWBP's examining whether new violations had occurred. These activities will be concluded promptly, and the results reported in time for all those affected to decide whether claims based on the additional violations (if any) could or should be asserted in the same litigation. Realistically, this means that the report of investigation should be transmitted from OE to PBSD by July 1 if possible.

By copies of this memorandum I am notifying OE, the Atlanta regional office, and the Miami Area Office of the agreements reached and our anticipated course of action. We appreciate your cooperation and willingness to reexamine this matter in order to achieve our current enforcement objectives.

cc: OE
Atlanta Regional Office
Miami Area Office

ANDREW F. PUZDER
ATTORNEY AT LAW
SUITE 808
408 OLIVE STREET
ST. LOUIS, MISSOURI 63102
PHONE 241-6116

May 24, 1982

The Honorable Orrin G. Hatch
Chairman, United States Senate Committee
  on Labor and Human Resources
Dirksen Senate Office Building
Room 4230
Washington, D. C.  20510

Dear Senator Hatch:

On Tuesday, May 19, 1982, Daniel Gill of your office first contacted me and requested that my client, Morris A. Shenker, agree to the release of certain unspecified documents in the possession of the Internal Revenue Service. These documents apparently relate to a settlement of alleged and disputed liability under the Employment Retirement Income Security Act of 1974 (ERISA). I have instructed my client not to agree to the release of these documents for the following reasons:

First, the legal effect of this tax settlement on the case of Donovan v. Schmoutey is an issue that will be before the Federal District Court in Las Vegas and will be resolved by that Court. Therefore, it would be inappropriate while the issues remain for judicial determination for us to agree to the release of internal, unspecified documents held by the IRS.

Second, we have previously submitted at your request a lengthy, well-documented statement setting forth the facts relevant to your investigation as well as our position on the Department of Labor's mishandling of the matters you are currently investigating. This statement, which is 125 pages in length, with voluminous exhibits, was submitted to you on a mere ten days notice. It is obvious from your statements at prior hearings that you failed to consider in any respect the facts set forth in that statement.

The Honorable Orrin G. Hatch
May 24, 1982
Page Two

Given the foregoing, I find it inconveivable that we could agree to the release you request. Having submitted a lengthy and well-documented statement, I see no reason to further respond in this matter.

Mr. Gill also inquired as to whether Mr. Shenker would be available to testify. As you are aware, we have previously submitted to you evidence of Mr. Shenker's very serious, life-threatening health condition. In 1980, Mr. Shenker suffered a serious cardiac arrest, was placed on life support systems for nine days and was hospitalized for 27 days. Mr. Shenker subsequently underwent open heart surgery, including a triple bypass and resection of a heart aneurism. Mr. Shenker's heartbeat must now be regulated by a pace maker. This condition obviously precludes him from testifying. If you desire further evidence of Mr. Shenker's current health condition, please contact me and I will supply it.

Respectfully,

ANDREW F. PUZDER

The CHAIRMAN. I have tried to be careful on some of the questions I am asking you here for a particular reason, because I do understand some of your difficulties.

Mr. Ryan, I want to change the subject a little bit. I turn now to the subject of the Morris Shenker tax settlement. On August 31, 1981, Shenker and the IRS entered into a settlement of any alleged liability of tax under ERISA, and Shenker agreed to pay a total of $199,000 for the tax years 1975 through 1979. The agreement indicated that "any alleged liability or tax under ERISA which had been or may be assessed by the IRS against Shenker would be final, conclusive, and binding."

Mr. Shenker argues that the language of this agreement relieves him from paying back the $45-million liability that is the subject of your Department's claim against him in the lawsuit *Donovan* v. *Shmoutey*. Was any official of the Labor Department consulted before the IRS struck this agreement with Shenker?

Mr. RYAN. No, Senator.

The CHAIRMAN. I would introduce as part of the record this agreement, as Ryan Document No. 3.

[Ryan Document No. 3 follows:]

Ryan #3

MORRIS A. SHENKER AND LILLIAN K. SHENKER 3650 Las Vegas Blvd., So., Las Vegas, Nevada 89109, No. 488-44-4290 No. 489-14-5467 and the Commissioner of Internal Revenue make the following Closing Agreement:

WHEREAS,

(1) On March 14, 1980, the Internal Revenue Service ("IRS") issue its "Report of Examination - Excise Taxes on Prohibited Transactions" ("Report") which proposed excise tax deficiencies against Morris A. Shenker under Section 4975(a), Chapter 43, Subtitle D, of the Internal Revenue Code ("IRC") (enacted as Title II of the Employees Retirement Income Security Act of 1974) ("ERISA") of $1,129.00, $25,279.00, $74,140.00, $123,922.00 and $173,704.00 for the years 1975 through 19 respectively;

(2) The said IRS Report further proposed assessment of a tax unde IRC Section 4975(b) if certain conditions stated under Section 4975 we not met;

(3) As a basis for assessment of the aforementioned tax under IRC Section 4975, the IRS Report alleged in part that the Southern Nevada Culinary and Bartenders Pension Trust ("Pension Trust") entered into prohibited transactions, as defined in IRC Section 4975(c), by loaning money to Sierra Charter Corporation ("Sierra"), a corporation allegedl owned in part by Morris A. Shenker;

(4) Morris A. Shenker timely filed a written protest of the findings stated in the IRS Report, and in said protest asserted in pa (a) that the loans by the Pension Trust to Sierra were not prohibited transactions within the meaning of IRC Section 4975(c); (b) that the loans were within the Transition Rules of ERISA (IRC Section 4975); (c) that even if the loans were considered prohibited transactions, there was a "correction" of the loan transactions, as that term is defined in IRC Section 4975(f)(5), by Sierra and Morris A. Shenker conveying and/or transferring to the Pension Trust numerous assets having substantial value;

(5) Morris A. Shenker has denied and continues to deny all liability under ERISA and particularly IRC Section 4975, and has deni and continues to deny that any prohibited transactions occurred;

(6) Both Morris A. Shenker and the IRS are desirous of arriving a compromise agreement of any alleged liability or tax under ERISA an particularly IRC Section 4975(a) which has been or may be assessed by the IRS against Shenker, arising out of any fact or matter stated in IRS Report, which agreement would be final, conclusive and binding:

NOW IT IS HEREBY DETERMINED AND AGREED for Federal excise tax purposes that:

1. Morris A. Shenker will pay the following sums as a compromise and settlement of any and all alleged liability under ERISA, and more particularly IRC Section 4975, arising out of or in any way related to loans made prior to December 31, 1979.

The Internal Revenue tax liability of the above named taxpayer with respect to the following type of tax for the following taxable periods is as stated hereinafter. However, except to the extend expressly determined hereinafter, this agreement does not determine applicability of interest.

Type of Tax

| Period | Character of Tax | Chapter Number of Internal Revenue Code | Total o Tax Lia For Pe |
|---|---|---|---|
| Dec. 31, 1975 | Excise, Sec. 4975(a) | 43 I.R.C. | $ 564 |
| | Excise, Sec. 4975(b) | 43 I.R.C. | No |
| Dec. 31, 1976 | Excise, Sec. 4975(a) | 43 I.R.C. | $12,639 |
| | Excise, Sec. 4975(b) | 43 I.R.C. | Non |
| Dec. 31, 1977 | Excise, Sec. 4975(a) | 43 I.R.C. | $37,070 |
| | Excise, Sec. 4975(b) | 43 I.R.C. | Non |
| Dec. 31, 1978 | Excise, Sec. 4975(a) | 43 I.R.C. | $61,961 |
| | Excise, Sec. 4975(b) | 43 I.R.C. | Non |
| Dec. 31, 1979 | Excise, Sec. 4975(a) | 43 I.R.C. | $86,852 |
| | Excise, Sec. 4975(b) | 43 I.R.C. | Non |

2. Nothing in this Agreement or the payment of said sums by Morris A. Shenker shall be construed or is intended to be an admission that the loan transactions referred to in the IRS Report were "prohibited transactions" under Section 4975(c) or were otherwise in violation of the provisions of the Employees Retirement Income Security Act of 1974 (ERISA).

3. That if the loan transactions referred to in the IRS Report, as well as any other loan transactions between the Pension Trust and Sierra prior to December 31, 1979 were prohibited transactions within the meaning of Section 4975(c), which Morris A. Shenker has denied and continues to deny, these transactions were "corrected" as defined in Section 4975(f)(5) in that over a period prior to December 31, 1979, Sierra and Morris A. Shenker conveyed and/or transferred to the Pension Trust numerous assets having substantial value, which transfers undid the loan transactions to the extent possible by placing the Pension Trust in a financial position not worse than that under the highest fiduciary standards.

Closing Agreement with Morris A. Shenker and Lillian K. Shenker

4. That payment of the aforementioned amount will constitute a complete and full action of satisfaction of any and all liability of Morris A. Shenker, his heirs, successors, assigns, executors and administrators, arising under ERISA and particularly IRC Section 4975 for any taxable period, concerning loans or advances made prior to December 31, 1979, by the Pension Trust to Sierra.

This agreement is final and conclusive except:

(1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact;

(2) it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions notwithstanding any other law or rule of law except Code section 7122; and

(3) if it relates to a taxable period ending after the date of this agreement, it is subject to any law, enacted after the agreement date, that applies to that taxable period.

By signing, the above parties certify that they have read and agreed to the terms of this document.

Your signature ______________________ Date Signed ______

Spouse's signature (if a joint return was filed) ______________________ Date Signed ______

Taxpayer's representative ______________________ Date Signed ______

Taxpayer (other than individual) ______________________

By ______________________ Date Signed ______

Title ______________________

Commissioner of Internal Revenue

By ______________________ Date Signed ______

Title [illegible] Chief

The CHAIRMAN. Now Mr. Ryan, we had hoped to delve into this settlement agreement in much greater detail with the IRS officials who worked on it. However, the IRS as you know is prohibited from coming here today because Mr. Shenker formally denied our request that he should sign a waiver of his right to confidentiality so that we could discuss this matter with the IRS. Therefore, we will put this matter in abeyance until such time as we persuade Mr. Shenker to give us a waiver or we are able to take legal action that may be open to us, in the event that Mr. Shenker fails or continues to fail to cooperate.

Therefore, I will introduce the Shenker letter at this point as Ryan Document No. 4.

[Ryan Document No. 4 follows:]

Ryan #4

ANDREW F. PUZDER
ATTORNEY AT LAW
SUITE 802
408 OLIVE STREET
ST. LOUIS, MISSOURI 63102
PHONE 241-6116

May 24, 1982

The Honorable Orrin G. Hatch
Chairman, United States Senate Committee
on Labor and Human Resources
Dirksen Senate Office Building
Room 4230
Washington, D. C. 20510

Dear Senator Hatch:

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Mr. Gill also inquired as to whether Mr. Shenker would be available to testify. As you are aware, we have previously submitted to you evidence of Mr. Shenker's very serious, life-threatening health condition. In 1980, Mr. Shenker suffered a serious cardiac arrest, was placed on life support systems for nine days and was hospitalized for 27 days. Mr. Shenker subsequently underwent open heart surgery, including a triple bypass and resection of a heart aneurism. Mr. Shenker's heartbeat must now be regulated by a pace maker. This condition obviously precludes him from testifying. If you desire further evidence of Mr. Shenker's current health condition, please contact me and I will supply it.

Respectfully,

ANDREW F. PUZDER

The CHAIRMAN. Mr. Ryan, let me just turn to the last issue of the day.

Well, let me reserve some of the materials I was going to go into for another day and another hearing because we have just run out of time here today. We will try to get into it at a later date.

Let me just conclude by saying that we have concluded three separate oversight hearings into how the Labor Department has handled cases involving alleged abuses of union pension funds and related questions. In each case, in my opinion, we have found the Department at a crucial juncture failed in its formal responsibility to the public and to the members of the affected unions. Our hearing into the Culinary Workers' pension trust showed that Morris Shenker borrowed $24 million from a group of lower paid workers and their pension trust with the permission of the trustees. He then purchased a gambling casino and has never repaid that money. The Labor Department, fully conversant with all these circumstances, chose to take no vigorous action of any kind, civil or criminal. Its civil case, filed years ago, has not gone anywhere while Shenker in my opinion has made a mockery of the Federal Government's role as protector of the pension funds of the union.

Compounding this situation is the Justice Department, which has not come forward in any meaningful manner to work this case and to restore to these little people the funds that they have earned and saved. When this committee, in honest perplexity and curiosity, sought to question, interview, and take formal testimony from the line attorneys at Justice who worked this case, it was stonewalled by the Justice Department career bureaucracy with the assistance of political appointees presently in place there. Now I do not think much of that particular chapter in American history. However, I will say I think some of the supervisors will be willing to testify and we have achieved some breakthrough on that at a future date but we do not know whether they are the ones who should testify because they are not the line attorneys.

We appreciate you and Mr. Clayton bringing in line people here today and helping us to get to the bottom of this hearing so that we can at least put the matters on the record, and we appreciate that very much.

Our second hearing delved into the murky world of organized crime's involvement in the Boilermakers' Union which has been consistently accused of playing a substantial role in the traffic in false documents certifying welders as being expert in their craft when in fact they actually had no such skills. Such accusations have been made by a number of individuals over a lengthy period. Worse, a number of unqualified individuals have allegedly worked on or near a number of the Nation's nuclear powerplants, leaving behind a legacy there that may well literally explode in the faces of millions of American people, and I might add, innocent people at that.

Faced with the ugly reality of this state of affairs, the Justice and Labor Departments chose to ignore that situation, allowing the certification traffic to continue. Honest welders who complained were abandoned to their fate. Worse, when the committee sought existing files from closed cases at Justice, we were again stonewalled by the same bureaucracy. The only document we obtained, a four-page FBI report, was produced from a closed file only under threat of a subpena. Again, I have to say this is a shameful, inexcusable episode.

Today, we have again gone into the Labor Department's files, emerging with a picture of a man convicted of abusing his own union's retirement funds for his own enrichment, and not just $9,000, but in so many other ways. After having been convicted of these acts, the Labor Department has chosen to allow him to continue for several years as a trustee of eight other union pension and retirement funds despite the fact that they possess legal power immediately at hand to remove him from all positions of responsibility.

No one in the Nation should any longer wonder why such acts are committed with such impunity by labor racketeers. The bulldog on guard has rubber teeth, and the cop on the beat does not dare use his gun or his club. Honest union workers are helpless against the onslaught of people our hearings have revealed infest unions like the Longshoremen, Boilermakers, and Culinary Workers. Their painstakingly acquired retirement moneys are fair game. Their complaints to Justice and Labor, we believe in the past have gone unheard. Both agencies develop lengthy files, complete with fact piled upon fact. All that is necessary is for people in authority in these agencies to take prompt, no-nonsense action, and I believe that that has not occurred.

All the materials we have used in these hearings have come from the files of Labor or Justice, from either of those Departments. Justice's Criminal Division and Labor's Solicitor's Office are the central action points of these two Government departments and at least in these cases I do not believe that they have acted in the public interest or at least have acted properly in the public interest.

The Labor Department Solicitor's Office I think is the traditional power center of that agency, and personally I do not blame you, Mr. Ryan, because I think you are trying to solve these problems. I do not blame you, Mr. Clayton, because you are new to this job and personally we have found that you are concerned about these areas and trying to solve them. I do not mean to blame anybody else but I think there has been a failure here, a failure in the duty of the Department, and I think the personnel have defaulted on their responsibilities again and again. I may not even blame you, Mr. Goldberg, although I really think that there is some blame there. You again relied on people who are working for you. You, Mr. Lebowitz, I think the record speaks for itself.

However, as a direct result of this refusal to act, people live in fear. Union assets are in the grip of mobsters, gangsters, and I might add these mobsters and gangsters are controlling some of the unions and they are unafraid of the Federal Government, and in many respects our laws are becoming a charade if we do not do something about these things.

Therefore, I think it is a shameful set of episodes and I submit we have just scratched the surface. We have not even begun to hit the real problems in our country and I have to admit I do not think even the Department of Labor has the records that indicate how really widespread and bad this really is.

Therefore, let's put the Labor Department on notice today as we have in the past that these hearings are going to continue until every person who will not enforce our laws is either driven from the agency or reformed or educated or improved. We will give that benefit of the doubt. We are going to use our subpena power if we have to but fortunately, as the result of your leadership, Mr. Ryan, we have not had to do that and we appreciate it very much. The same for you, Mr. Clayton. We hope that continues.

I think past excuses should not be availing as defenses against these inquiries. I do not think it has anything to do with partisan political activity. In fact, some of the union workmen have come in and said, "This is the first time anybody had tried to help us," and have been surprised that I would be doing it because all the COPE newsletters say is that I must be antiunion. I am not. If ordinary working people cannot get simple justice, basic justice inside of a basic American institution, I think we have the obligation to see that those imbalances are corrected.

I hate to say this but I believe that your institution and our institution, the Department of Labor, is filled with people who think that they are doing this country a service by protecting the unions, certain unions, I should say, because there are many honest unions in this country and many honest union leaders who are just doing their jobs, trying to do the best they can for the workers in this country under collective bargaining agreements. I suspect there is a lot of sympathy with the sweeping under the rug that we have found, at least in these three cases, and frankly in other cases that we are investigating, because of ideological alliances. I personally do not believe that should exist in a department that is designed to help the people of this country. I think it does exist and I think anybody who looks at the record has to think that it exists as well.

Let me just close by saying I am pleased with the cooperation we are getting right now. I certainly have to tell you, Mr. Ryan, I am pleased that you are opening up files to us and are helping us to do our job up here in oversight, and we hope in our small way that these hearings will help you to be able to do a better job, and you also, Mr. Clayton, and of course you other remaining members of the Department. We are going to keep doing this until we feel that the problems are solved and I hope that you will help us to do it because in the end nobody is served by trying to cover up things that really should not be covered up.

We will go into the local 945 matters at a later date. Thank you so much.

With that, we will recess these hearings until later.

[Whereupon, at 12:25 p.m., the committee recessed, to reconvene at the call of the Chair.]

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